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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 50

GLASS CITY BANK OF JEANNETTE, PENNSYLVANIA, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITION FOR CERTIORARI FILED MARCH 26, 1945.

CERTIORARI GRANTED MAY 7, 1945.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 50

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[fol. 1a]

IN UNITED STATES CIRCUIT COURT OF APPEALS, THIRD CIRCUIT

Appendix to Appellant's Brief

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

No. 20938 in Bankruptcy

In the Matter of THE VICTOR BREWING COMPANY, Bankrupt

EXCERPTS FROM THE DOCKET ENTRIES

1940:

Oct. 4, Filing Fee, $70.00

Oct. 4, On creditors' petition to effect a plan of reorganization order made directing that service of a subpoena be made upon the said Victor Brewing Company, returnable Oct. 15, 1940; that the Victor Brewing Company make answer to the said petition on or before the return day. (C. M. 4)

1941:

Jan. 31, Order made directing that the debtor be adjudged bankrupt and bankruptcy proceeded with; that the proceedings be referred to J. Raymond Sowash, Referee at Greensburg, Pa. (C. M. 4)

March 5, On petition order made granting rule upon the Glass City Bank to show cause why it should not be [fol. 2a] permanently enjoined from proceeding with the writ of execution attachment caused to be issued out of the Court of Common Pleas of Allegheny County, Pa., against F. A. Maddas, defendant, and Robert C. Sproul and Clyde E. Smith, Trustees of the Victor Brewing Company, as garnishees, rule returnable March 15, 1941 at 10 a. m.

March 14, Answer of The Glass City Bank to Trustees' Petition for Injunction against Glass City Bank, filed.

April 2, Opinion on Trustees' petition for injunction against Glass City Bank filed by Judge Schoonmaker, directing that order may be submitted in accordance with said opinion, upon notice to the other side.

April 10, Order made directing that the rule granted against Glass City Bank be made absolute and that the injunction

be made permanent and that the Glass City Bank, et al, be jointly and severally and permanently restrained from proceedings with writ of execution attachment.

Dec. 9, On the petition of the Glass City Bank order made granting rule upon the trustees to show cause, returnable Dec. 24, 1941, why the order made by this Court on April 12, 1941, restraining the Glass City Bank from proceeding with its attachment execution should not be modified; further to show cause why the Glass City Bank should not be authorized to proceed with its attachment execution issued out of the Court of Common Pleas of Allegheny County, Pa., against F. A. Maddas and summoning as garnishees the said trustees; further to show cause why the trustees should not make appropriate answer to the interrogatories issued in connection with the said attachment execution and heretofore served on the trustees; and it is further ordered that pending the determination of this rule, that the trustees be directed to make payment of funds set apart to F. A. Maddas by the [fol. 3a] order of J. Raymond Sowash dated Dec. 3, 1941.

Dec. 24, Trustees' Answer to Petition of The Glass City Bank for Leave to Proceed with Attachment Execution on Funds in the hands of Trustees set apart to F. A. Maddas filed.

1942:

March 5, Hearing on Petition of Glass City Bank begun before Judge Gibson. Same day hearing adjourned to March 30, 1942. Hearing Memo filed.

March 30, Hearing on Petition of Glass City Bank for leave to proceed with Attachment Execution begun and concluded C. A. V. before Judge Schoonmaker. Hearing Memo filed.

April 29, Opinion filed by Judge Schoonmaker. Application of the Glass City Bank to be denied. Order may be submitted accordingly.

May 2, Order made directing that the rule granted on Dec. 9, 1941, be discharged and that the prayer of petition of the Glass City Bank be denied and that the injunction heretofore granted on April 19, 1942, against the Glass City Bank, restraining it from proceeding with execution attachment proceeding be continued in full force and effect.

Nov. 29, Referee's Certificate of Review filed re Petition of Glass City Bank, together with petition of Glass City Bank for a certificate of review, Petition of the United States for Review of Referee's Order; Petition and order of the Referee; Opinion and Order of the Referee in Re Distribution of balance of fees allowed Frank A. Maddas as Receiver in Equity; Answer of the First National Bank in Greensburg to Rule; Answer of the Trustees to Rule on Petition of Glass City Bank; Testimony; Exhibit.

[fol. 4a] 1944:

Feb. 1, Opinion on Certificate to Review an Order of Referee Sowash in the Matter of Fees allowed Frank A. Maddas, as Receiver in Equity filed by Judge Schoonmaker.

Feb. 14, Order made directing that that part of the Referee's order directing payment of the note of the First National Bank of Greensburg, Pa., ahead of the income tax liens of the Un. S. be reversed and set aside; that part of the Referee's order disallowing the claims of the Glass City Bank of Jeannette, Pa., to said funds, be affirmed; that the Trustees in Bankruptcy be ordered to pay to the U. S. the entire fund of $3,228.53 for application upon income taxes assessed and outstanding against Frank A. Maddas.

Feb. 23, Notice of Appeal filed.

Feb. 23, Designation of portions of record, proceedings and evidence to be contained in record of appeal filed.

Feb. 23, Appeal Bond in the sum of $250.00 filed.

Feb. 23, Copy of Notice of Appeal and Copy of Designation of portions of the record mailed to Charles Uhl, U. S. Attorney.

Feb. 23, Copy of Notice of Appeal mailed to Wm. H. Rowland, Clerk of the Circuit Court of Appeals.

[fol. 5a] IN UNITED STATES DISTRICT COURT

REFEREE'S CERTIFICATE OF REVIEW

To the Honorable, the Judges of Said Court:

I, J. Raymond Sowash, Referee in Bankruptcy in charge of this proceeding, do hereby certify:

That, in the course of said proceeding on April 9, 1943, the following order was made and entered by me:

> "And now, April 9, 1943, the rule issued on July 15, 1942, on Robert C. Sproul and Clyde E. Smith, trustees in bankruptcy, on Frank A. Maddas, on Walter L. Miller, Collector of Internal Revenue for the 23rd District of Pennsylvania, for the United States of America, and on First National Bank in Greensburg, is discharged. The trustees are ordered and directed to pay to First National Bank in Greensburg, from the funds in their hands payable to Frank A. Maddas, as compensation as receiver in equity, a sum sufficient to satisfy the obligation for which the assignment of a portion of said funds is held as security, and to pay the balance thereof to the Collector of Internal Revenue on account of the lien of United States for 1936 federal income taxes as assessed against the said Frank A. Maddas".

On April 17, 1943, Glass City Bank, one of the claimants to the fund in the hands of the trustees, feeling aggrieved at the referee's order, filed a petition for review of said order.

On April 19, 1943, the United States of America, another one of the claimants to the said fund, also feeling [fol. 6a] aggrieved at the referee's order, filed a petition for review of the said order.

FINDINGS OF FACT

1. The sum of $3,228.53, being the unpaid balance of the amount allowed by the referee to Frank A. Maddas for services as equity receiver of Victor Brewing Company in proceedings in the Court of Common Pleas of Westmoreland County, is presently in the hands of the trustees in bankruptcy pending decision as to its payment.

2. The services as said equity receiver were performed by Mr. Maddas from December 26, 1938, to October 22, 1940. For these services the referee allowed Mr. Maddas the sum of $13,000.00, of which amount there had been paid to Mr. Maddas during the course of the proceedings the sum of $11,771.47, leaving the aforesaid unpaid balance of $3,228.53.

3. The balance of $3,228.53 was earned by Mr. Maddas after July 29, 1939. (This finding is arrived at, as explained in the opinion of the Referee filed in this matter, by applying the rule of law that, where a general payment is made, in the absence of any appropriation by the parties, the law will apply it in discharge of the earliest liabilities of a running account.)

4. Notice of tax liens against Frank A. Maddas and in favor of the United States of America for income tax for the years 1920, 1921 and 1922 were filed in the office of the Prothonotary of Westmoreland County on July 29, 1939.

5. Notice of tax liens against Frank A. Maddas and in favor of the United States of America for income tax [fo]. 7a] for the year 1936 was filed in the office of the Prothonotary of Westmoreland County on April 7, 1941, which was four days after the assignment made by Mr. Maddas to First National Bank in Greensburg, as set forth in the eighth finding of fact.

6. The Glass City Bank of Jeannette entered a judgment against the said Frank A. Maddas for the sum of $19,041.75, plus interest, in the Court of Common Pleas of Allegheny County on February 19, 1941, and on February 21, 1941, secured an attachment execution out of said court which was served on the trustees in bankruptcy as garnishees.

7. Prior to the service of the execution attachment no application had been made to the Bankruptcy Court for leave to proceed with the garnishment.

8. On April 3, 1941, Mr. Maddas assigned to First National Bank in Greensburg the sum of $2,530.08 due him for fees as equity receiver to secure the payment of note of even date in the amount of $800.00.

The Question of Law involved in this review may be thus stated:

Can a fund which represents payment for services as an equity receiver and which fund is in the hands of trus-

tees in bankruptcy be attached by a judgment creditor of the said equity receiver?

Do federal income tax liens attach to salary earned by the taxpayer after the filing of said liens?

Does a tax lien for federal income taxes have priority over a claim based on an assignment by the taxpayer, which assignment was made prior to the filing of the federal tax liens either in the office of the Clerk of the United States District Court or in the office of the Prothonotary of the [fol. 8a] Common Pleas Court of the County within which taxpayer resides, and where it does not appear that the assignee had notice of the tax lien when it took the assignment?

I hand up herewith for the information of the court the following papers:

Exemplification of the record from the Court of Common Pleas of Allegheny County, Pa., of judgment at No. 1072 April Term, 1941, D. S. S., and of the execution attachment at No. 1810 April Term, 1941.

Petition of Glass City Bank, addressed to the undersigned referee, for rule upon Robert S. Sproul and Clyde E. Smith, trustees, et al., directing them to show cause why the said fund should not be paid to said Glass City Bank.

Answer of trustees to petition of Glass City Bank.

Answer of First National Bank in Greensburg to petition of Glass City Bank.

Testimony taken on petition for rule and answers thereto, together with exhibits attached thereto and made part thereof.

Opinion and order of referee filed in this matter.

Petition of Glass City Bank for a certificate of review.

Petition of United States of America for a certificate of review.

I further certify that by letter of this date notice of the filing of this certificate of review was given by me to Lewis M. Alpern, Esquire, Frank W. Stonecipher, Esquire, Fred B. Trescher, Esquire, Honorable Charles P. Uhl, Rabe F. Marsh, Sr., Esquire, and Homer Miller, Esquire.

J. Raymond Sowash, Referee in Bankruptcy.

November 27, 1943.

[fol. 9a] IN UNITED STATES DISTRICT COURT

OPINION ON CERTIFICATE TO REVIEW AN ORDER OF REFEREE SOWASH IN THE MATTER OF FEES ALLOWED FRANK A. MADDAS, AS RECEIVER IN EQUITY—Filed February 1, 1944.

SCHOONMAKER, *Judge:*

This case is now before this court on certificate to review an order of J. Raymond Sowash, Referee in Bankruptcy, made on April 9, 1943. This order directed payment out of the funds of the bankrupt estate in the sum of $3,228.53 awarded to one Frank A. Maddas, as Receiver in the State Courts of Pennsylvania of said Victor Brewing Company: (1) To the First National Bank of Greensburg, Pennsylvania, to satisfy a note in the sum of $800.00 given by Maddas to that bank on April 1, 1941, and secured by an assignment from said Maddas to said bank of his fees as such receiver to the extent of $2530.08; and (2) The balance of said fund of $3228.53 remaining after the payment of said note of First National Bank of Greensburg to the Collector of Internal Revenue to apply on account of the lien of the United States for 1936 Federal income taxes assessed against said Maddas.

The United States has filed a petition to review this order, claiming that the entire sum of $3,228.53 awarded to Maddas as receiver, should be paid to the Collector of Internal Revenue to apply on Federal income tax liens against Maddas.

[fol. 10a] The Glass City Bank, a claimant of said fund by reason of an attachment-execution issued February 19, 1941, out of the Court of Common Pleas of Allegheny County, Pennsylvania, on a judgment entered in said court against said Maddas in the sum of $19,041.75, by which said bank sought to attach said fund due Maddas as receiver,—also seeks a review of said order, claiming the entire fund should be awarded to that bank.

The facts involved are not in dispute, and may be briefly stated as follows:

Maddas was appointed equity receiver of the Victor Brewing Company in proceedings in the Court of Common Pleas of Westmoreland County, Pennsylvania, and served in that capacity from December 28, 1938, to October 22, 1940.

On October 4, 1940, a petition was filed in this court against the Victor Brewing Company for a reorganization under Chapter X of the Bankruptcy Act, as amended. On January 31, 1941, the debtor was adjudicated a bankrupt.

On June 13, 1941, Maddas filed an application in this court for an allowance of receiver's fees. The Referee allowed him a total of $15,000 for his services, of which $11,771.47 had been previously paid him through order of the Common Pleas Court, leaving a balance due of $3,228.53, which is now held by the Trustees in Bankruptcy.

The Glass City Bank of Jeannette, Pennsylvania, obtained a judgment against Maddas on February 15, 1941, in the Court of Common Pleas of Allegheny County for $19041.75. On February 21, 1941, this bank issued an attachment-execution out of said court, summoning the Trustees of the Victor Brewing Company as garnishees. This attachment-[fol. 11a] execution issued without leave of this court. The Trustees in Bankruptcy opposed the garnishment proceedings and filed an application in this court to enjoin the proceedings. Prior thereto, on October 23, 1940, this court had entered an order, reading in part as follows:

> "All suits pending against the debtor and its property are hereby stayed until such final decree in these proceedings and the commencement of any suit against the debtor or the Trustees' or any suit or proceedings to enforce a lien upon the property of the debtor, is hereby enjoined. All creditors and stockholders of the debtor and all persons whomsoever are hereby enjoined and restrained in any manner whatsoever from interfering with money, property or assets of which the trustees shall be entitled to take possession, and from interfering in any manner with the discharge by the trustees of their duties and the management of the business and property of the debtor, and from interfering in any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over the debtor and such property and assets."

On April 2, 1942, this court enjoined the Glass City Bank from proceeding with its attachment proceedings. Later, the Glass City Bank again sought leave to proceed with its attachment proceedings, but on April 29, 1942, this application was denied.

On April 3, 1941, Maddas executed a note to the First National Bank of Greensburg for $800.00; and, as collateral security, he gave the bank a written assignment of even date covering the receiver's fees due him to the extent of $2530.08.

The Government has Federal income-tax claims against Maddas as follows:

[fol. 12a]

Years	Amounts	Dates Assessed	Balance Due
1920	$908,490.37	August 10, 1935	$671,987.07
1921	476,050.51	August 10, 1935	108,291.80
1922	392,452.98	August 10, 1935	478,392.13
1936	9,129.72	Jan. 17, 1941	9,129.72

The above balances do not include accrued interest.

For the years 1920, 1921, and 1922, the Collector received the assessment lists on August 12, 1935. Notices and demands were made on August 13, and August 24, 1935. Notices of tax liens were filed with the Prothonotary, Westmoreland County, Pennsylvania, on July 29, 1938, and with the Clerk of the United States District Court on July 27, 1939.

The Collector received the assessment list covering the 1936 taxes on January 20, 1943. First notice and demand was made on January 21, 1941; and second notice and demand was made on February 3, 1941. Notices of tax liens were filed with the Clerk of the United States District Court on April 4, 1941, and with the Prothonotary, Westmoreland County, Pennsylvania, on April 7, 1941.

On these facts we are of the opinion that the entire fund in dispute should have been awarded to the United States on its liens for the years 1920, 1921, and 1922, which amount to more than $1,000,000. The Collector of Internal Revenue received the assessment lists of these taxes on August 12, 1935. Notice and demand for payment were made by the Collector on August 13, 1935, and August 24, 1935. The lien of the United States arose on the date the Collector received the assessment lists. See U. S. C. A. (1946 Ed.) Title 26, Sec. 3671; *MacKenzie* v. *United States*, 109 F. (2nd) 540; *Filipowicz* v. *Rothansies*, 31 F. Supp. 716.

[fol. 13a] Notices of tax liens for these taxes for the years 1920, 1921, and 1922, were filed on July 27, 1939, and July 29, 1939, and long before the assignment from Maddas to the First National Bank. These liens continue until they are paid and attach to after-acquired property. See *Citizens National Bank of Los Angeles* v. *United States*, 135 F. (2nd) 527. There the court said:

> "The statute provides that the United States shall have a lien upon 'all property' belonging to the taxpayer. There is no limitation placed on the expression in the statute 'the amount * * * shall be a lien * * * upon *all* property and rights to property.' That this expression is not limited to property possessed by the debtor at the time the distraint is laid is plainly indicated by the provision of the statute that the lien 'shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time,' an amendment made by Sec. 613 of the Revenue Act of 1928. Formerly, the statute decreed that the lien was in effect 'until paid.' If the lien is not considered as applying to after acquired property, the amendment is meaningless, for the lien would continue in any event as to property owned when the lien arose."

See also *Nelson* v. *United States*, (U. S. C. A. 9th Circuit), No. 10,453, opinion filed November 23, 1943, holding that after-acquired property of a delinquent taxpayer is subject to the tax-lien of the Government.

The Treasury Department has consistently applied this statute to give the Government a lien on after-acquired property. See T. D. 4275, VIII-2 Cum. Bull. 167 (1927); *Graves* v. *Commissioner*, 12 B. T. A. 124, 132-133.

In such a situation, Congress must be taken to have approved the administrative construction, and thereby [fol. 14a] given it the force of law. See *Helvering* v. *Reynolds Co.*, 306 U. S. 110, 115.

We therefore conclude that as between the United States and the First National Bank of Greensburg, the United States is entitled to the entire fund allotted to Maddas for his services in the State Court receivership proceedings.

The Referee relied largly on *United States* v. *Long Island Drug Company*, 115 F. (2nd) 983, as sustaining his conclusion that the First National Bank's assignment had priority

over any claim of the Government. We are of the opinion this case does not support his conclusions, because the taxpayer in that case had made a contract with the Long Island Drug Company by which his future wages were to be applied to a note of $40,000 which the taxpayer and his wife had given the Drug Company. The court held that, since the taxpayer had assigned his wages before they fell due and had no wages legally due him for his work at the time the levy was made against the Drug Company, there was nothing on which levy could be made. In the instant case, Maddas was concededly entitled to fees as receiver in the receivership case pending in the State Court. The Government's lien for taxes for these years 1920, 1921, and 1922, accrued long before the assignment to the First National Bank.

In the case of *United States* v. *Warren R. Company*, 127 F. (2nd) 134, the court held that the Government's lien right attached to future rentals, even though under the terms of the lease the rentals were payable to the shareholders instead of the corporation. The Referee undertook to distinguish the Warren Railroad case from the case at bar, on the ground that in the Warren case there was a lease in existence out of which future rentals would be payable, whereas in the instant case Maddas had no property [fol. 15a] right in future earnings. We cannot agree with this reasoning. In the Warren Railroad case there was a lease in existence at the time the lien arose, which would probably produce future rentals. In the case at bar Maddas was an equity-receiver under order of court at the time the lien arose; and there was the same probability that as long as that receivership continued, future earnings would result from the employment of Maddas as such receiver.

As to the claim of the Glass City Bank, which arose out of an attachment-execution issued out of the Court of Common Pleas of Allegheny County, Pennsylvania, we are of the opinion that the Referee properly disallowed this claim. Maddas' fees as receiver are exempt from attachment-execution under the provisions of the Pennsylvania Act of April 15, 1845, P. L. 459 (42 Purdon's Stat. Sec. 886). See *Bell* v. *Roberts* 28 Atl. (2) 715.

Even if the Glass City Bank were entitled to issue an attachment-execution against Maddas' salary, its proceedings to that end are of no avail, because it was denied permission by this Court to proceed with its attachment-execution.

In addition to all that, the tax liens of the Government are superior to any claim the Glass City Bank might have had, for notices of the Government liens for taxes were filed before the Bank secured its judgment and issued its attachment-execution.

The order of the Referee, so far as it awarded to the First National Bank of Greensburg any part of the fund in controversy, is reversed; and the entire fund will be ordered paid to the Collector of Internal Revenue. The Referee's order denying the claim of the Glass City Bank will be affirmed.

An order in accordance with this opinion may be submitted on notice to opposing counsel.

[fol. 16a] IN UNITED STATES DISTRICT COURT

ORDER

In re: Certificates to Review Order of Referee Sowash in the Matter of the Disposition of Fees Allowed Frank A. Maddas as Receiver in Equity of Victor Brewing Company.

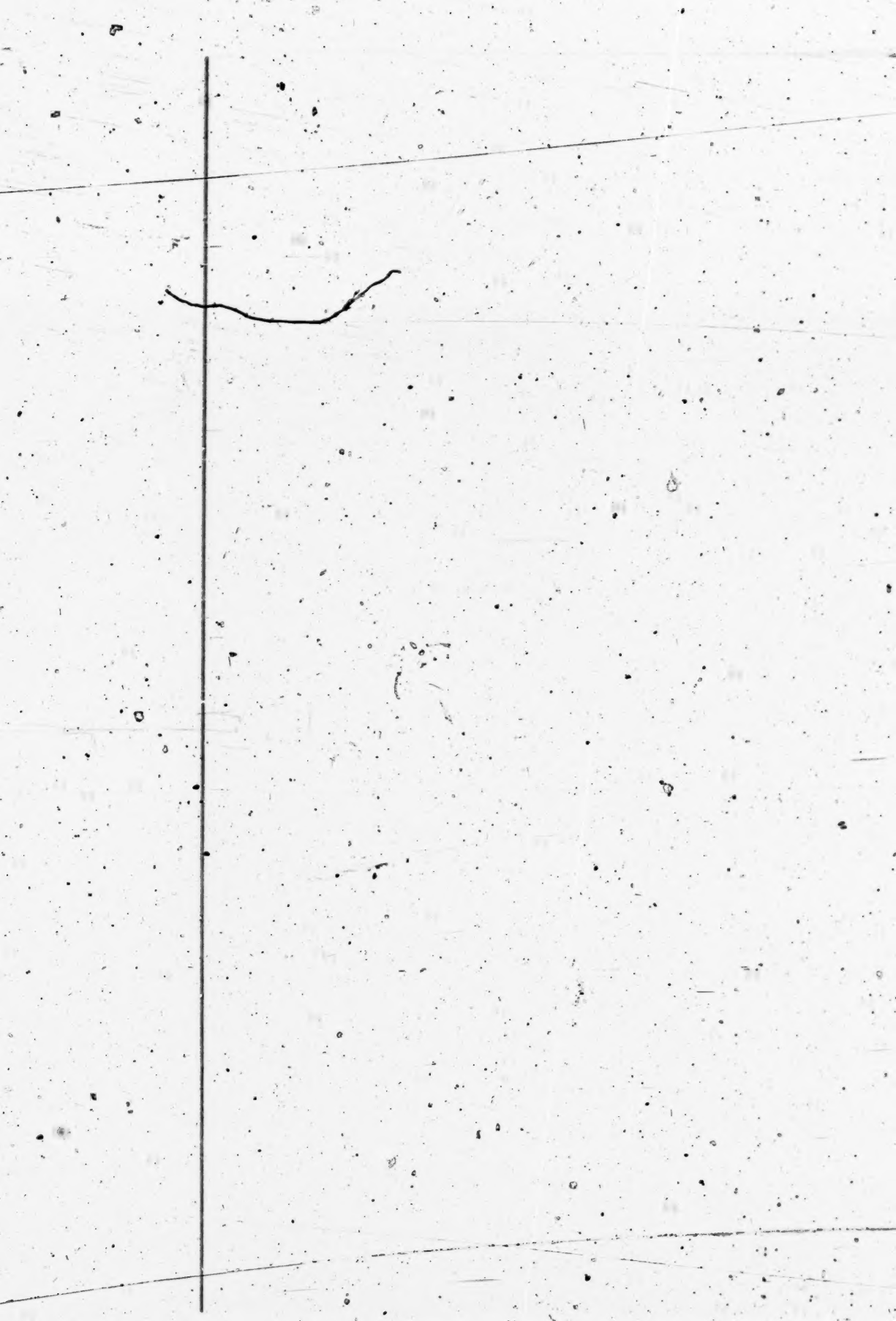
This matter came on for hearing before this Court on certificates to review an order of J. Raymond Sowash, Referee in Bankruptcy, entered on April 9, 1943, directing the payment of funds of the bankrupt estate in the amount of $3,228.53, previously awarded to Frank A. Maddas for services as receiver of the bankrupt in the Court of Common Pleas, Westmoreland County, Pennsylvania, first to the First National Bank, Greensburg, Pennsylvania, in an amount sufficient to satisfy the note of $800 given by Maddas to said bank on April 1, 1941, and secured by an assignment from Maddas to said bank of receiver's fees to the extent of $2,530.08, and the balance to the United States to apply on its income tax liens against Maddas, and disallowing the claims of the Glass City Bank of Jeannette, Pennsylvania, asserted against said fund.

The Glass City Bank of Jeannette, Pennsylvania, and the United States each having filed petitions to review said order of the referee, and this Court having heard said petitions for review on certificates to review said order and being duly

advised in the premises, hereby orders that (1) that part of the Referee's order directing payment of the note of the First National Bank of Greensburg, Pennsylvania, ahead of the income tax liens of the United States is hereby reversed and set aside; (2) that part of the Referee's order [fol. 17a] disallowing the claims of the Glass City Bank of Jeannette, Pennsylvania, to said funds is hereby affirmed; and (3) the Trustees in Bankruptcy of Victor Brewing Company are hereby ordered to pay over to the United States the entire fund of $3,228.53 for application upon income taxes of the United States assessed and outstanding against Frank A. Maddas, which are secured by tax liens and which taxes are for the years 1920, 1921, 1922 and 1936.

SCHOONMAKER, *Judge.*

Dated this 14th day of February, 1944.



[fol. 18] UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944

No. 8609

In the Matter of VICTOR BREWING COMPANY, Bankrupt

GLASS CITY BANK OF JEANNETTE, PA., Appellant,

vs.

UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Western District of Pennsylvania

And now, to-wit: this 10th day of November A. D. 1944, it is ordered that Hon. William H. Kirkpatrick District Judge, for the Eastern District of Pennsylvania, be, and he is hereby assigned to sit in above case in order to make a full court.

Goodrich, Circuit Judge.

Endorsements: Order Assigning Hon. Wm. H. Kirkpatrick for Argument. Received & Filed Nov. 10, 1944. Wm. P. Rowland, Clerk.

[fol. 19] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944

No. 8609

In the Matter of VICTOR BREWING COMPANY, Bankrupt

GLASS CITY BANK OF JEANNETTE, PA., Appellant,

vs.

UNITED STATES OF AMERICA

And afterwards, to wit, the 10th day of November, 1944, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Herbert F. Goodrich and Honorable Gerald McLaughlin, Circuit Judges, and Honorable William H. Kirkpatrick, District Judge, and the Court not

being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 29th day of December, 1944, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 20] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944

No. 8609

In the Matter of VICTOR BREWING COMPANY, Bankrupt; GLASS CITY BANK OF JEANNETTE, PENNSYLVANIA, Appellant,

v.

UNITED STATES OF AMERICA

On Appeal from the District Court of the United States for the Western District of Pennsylvania

Before Goodrich and McLaughlin, Circuit Judges, and Kirkpatrick, District Judge

OPINION OF THE COURT—Filed December 29, 1944

By GOODRICH, Circuit Judge:

This appeal involves a dispute over certain money between a judgment creditor claiming under an attachment execution and the United States government claiming under income tax liens. The money in question represents compensation allowed by the court for services rendered in connection with the Pennsylvania state court receivership of the Victor Brewing Company, subsequently adjudged bankrupt in the United States District Court. The services for the amount here in question were all rendered by the taxpayer subsequent to the effective date of the government's tax liens. The judgment creditor contends for non-applicability of the liens to such a fund.

[fol. 21] Maddas, the taxpayer, was appointed equity receiver by the Pennsylvania state court in December, 1938. The proceedings were transferred to the federal bankruptcy court on October 4, 1940; the state receivership was terminated and Maddas discharged on October 22, 1940. The

fund now in dispute represents receiver's fees awarded Maddas by the referee in bankruptcy in December, 1941.

The government's liens are based on income tax assessments against Maddas for the three year period 1920-1922, and also for the year 1936. With respect to the earlier delinquency the Collector of Internal Revenue received the assessment lists and made proper notice and demand upon the taxpayer in August, 1935. Notices of the tax liens were filed in the Pennsylvania state court and in the federal bankruptcy court in July, 1939. Similar steps were taken in connection with the 1936 assessment: notice and demand occurred in January and February, 1941; filing of notices of tax liens in both state and federal courts in April, 1941.

The Glass City Bank of Jeannette, Pennsylvania, appellant here, obtained judgment against Maddas in the state court and issued attachment execution out of that court in February, 1941; and summoned the trustees of the bankrupt corporation as garnishees. In April, 1941, upon petition of the trustees in bankruptcy, the federal court enjoined appellant's garnishment proceedings, pending determination of the amount of money which would be available for distribution to Maddas in the way of fees for services rendered. The injunction was subsequently made permanent and the fund ordered retained by the United States Court for allocation to the government's tax liens.

Glass City Bank filed petition for review of this award in the District Court, which awarded the entire fund here in question to the government.[1]

[fol. 22] The main question in the case, then, is whether the lien of the United States for taxes applies to after acquired property of the taxpayer. There is no dispute here that the amount of compensation to which Maddas became entitled was for services rendered subsequent to the years for which the lien for unpaid taxes is claimed.

This question has been thoroughly discussed by the Circuit Court of Appeals for the 9th Circuit and an affirmative answer given. Citizens Nat. Trust & Savings Bank of Los Angeles v. United States, 135 F. (2d) 527 (1943).

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[1] Prior to the award to him for services rendered, Maddas had attempted to assign part of his claim against the bankrupt estate to the First National Bank, Greensburg, Pennsylvania. The bank's claim for the fund in dispute in the instant case has since been abandoned.

The conclusion there reached has been twice reiterated on the authority of that decision. Nelson v. United States, 139 F. (2d) 162 (C. C. A. 9, 1943), cert. den. 322 U. S. 764 (1944); Investment & Securities Co. v. United States, 140 F. (2d) 894 (C. C. A. 9, 1944).

In the Citizens Bank case the court gives four reasons for the conclusion reached, three of which apply with equal force in the instant case. The first is the very broad language of the lien statute itself, 26 U. S. C. A. § 3670. It provides that the amount of the unpaid tax "shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person". If the rights of the United States under its lien are to be limited, it must be otherwise than under the literal application of language used by the draftsman.

The second reason is found in the amendment to the next section (3671) dealing with the period of the lien. The statute now provides that it "shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time". This is an amendment made by § 613 of the Revenue Act of 1928. Said the 9th Circuit, in the Citizens Bank case above cited, "Formerly, the statute decreed that the lien was in effect 'until paid.' If the lien is not considered as applying to after acquired property, the amendment is meaningless, for the lien would continue in any event as to property owned when the lien arose."

[fol. 23] A third reason advanced is the analogy to the tax lien and the lien of a judgment, which, by the weight of common law authority attaches to after acquired real property of the debtor. This reason is inapplicable in the instant case for we are not here dealing with after acquired real estate.

Finally, the court calls attention to the rulings which show the administrative interpretations clearly indicating that after acquired property is to be included in the lien provided for in the statute. (G. C. M. 4715 VII—2 Cum. Bul. 94 (1928); T. D. 4275 VIII—2 Cum. Bul. 167 (1929)) and pointed out that the statute has been twice amended since these rulings with no definite provision as to after acquired property. Thus the interpretation must be taken to have been known and approved by Congress.

A 2nd Circuit decision is pressed by the bank here as opposed. United States v. Long Island Drug Co., 115 F.

(2d) 983 (1940). Language in the opinion, it may be conceded, does look the other way. The court in the Citizens Bank decision and the District Court in the instant case distinguished the Long Island Drug decision on the ground that the taxpayer there had assigned his wages before they fell due and since there was nothing owing him at the time of the levy there was nothing upon which it could be made. This distinction we believe to be correct.

No additional considerations to those discussed by the court in the Citizens Bank decision are offered by the government on this point here and none occurs to us. Counsel for the bank makes suggestions of hardship to third parties if the lien is applied as the government seeks to apply it. These are in part answered by the recording provisions of the statute, 26 U. S. C. A. § 3672. But in any event, they are a matter for the Congress to determine as a matter of policy. We think the conclusions reached in the three 9th Circuit decisions cited above are sound, and we follow them.

This disposed of the case and the other questions raised and argued do not need to be passed upon. It is highly [fol. 24] doubtful in view of the interpretation by the Pennsylvania courts of the Act of 1845 whether the sum due Maddas was subject to attachment. See Bell v. Roberts, 150 Pa. Super. 469, 28 A. (2d) 715 (1942). But since the lien for the taxes was prior to the attachment, this question need not be decided.

Affirmed.

A true copy: Teste.

——— ———, Clerk of the United States Circuit Court of Appeals for the Third Circuit.

[fol. 25] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944.

No. 8609

In the Matter of VICTOR BREWING COMPANY, Bankrupt; GLASS CITY BANK OF JEANNETTE, PENNSYLVANIA, Appellant

Present: Goodrich and McLaughlin, Circuit Judges, and Kirkpatrick, District Judge

On Appeal from the District Court of the United States for the Western District of Pennsylvania

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Western District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of February 14, 1944 of the said District Court in this case be, and the same is hereby affirmed.

By the Court,

Goodrich, Circuit Judge.

December 29, 1944.

Endorsements—Order Affirming District Court Order of February 14, 1944. Received & Filed Dec. 29, 1944. Wm. P. Rowland, Clerk.

[fol. 26] UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, set.:

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Appendix to Brief for Appellant, as constituting the portions of the Record before this Court at argument; and proceedings in this Court in the Matter of Victor Brewing Company, Bankrupt, Appeal of Glass City Bank, No. 8609,

on file and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 13th day of March in the year of our Lord one thousand nine hundred and forty-five and of the Independence of the United States the one hundred and sixty-ninth.

Wm. P. Rowland, Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal.)

[fol. 27] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 7, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: File No. 49,535. U. S. Circuit Court of Appeals, Third Circuit. Term No. 50. Glass City Bank of Jeannette, Pennsylvania, Petitioner vs. The United States of America. Petition for a writ of certiorari and exhibit thereto. Filed March 26, 1945. Term No. 50 O. T. 1945.

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1945

No. 1082 50

GLASS CITY BANK OF JEANNETTE, PENNSYLVANIA,

Petitioner

vs.

THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF

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SUPREME COURT OF THE UNITED STATES

Term, 1945

No.

In the Matter of the Victor Brewing Company, Bankrupt

Glass City Bank of Jeannette, Pennsylvania,
Petitioner

vs.

United States of America

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

To the Supreme Court of the United States:

The petitioner above named, Glass City Bank of Jeannette, Pennsylvania, presents this petition for writ of certiorari, and shows unto the Supreme Court of the United States the following:

(A)

SUMMARY STATEMENT OF MATTERS INVOLVED

The question here presented is whether the Government has a lien by virtue of an income tax assessment on

property which was non-existent when the tax assessment was made and when the lien notices were filed.

Stated differently, does the Government when it makes an income tax assessment against an individual acquire a lien on everything the individual may thereafter earn or that may thereafter come into his possession without any further action on the part of the Government by way of issuance of an attachment or distraining warrant?

The fund in dispute in this case was awarded to one F. A. Maddas in a bankruptcy proceeding for services performed by Maddas while acting as a State Court Receiver for the company which was later adjudicated a bankrupt (R. 6a). The services for which the fee was awarded were performed five years after the tax assessment had been made and after lien notices were filed in the office of the Clerk of the United States District Court and in the office of the Prothonotary of Westmoreland County, Pennsylvania (R. 6a).

The Government's position is that once an income tax assessment list is received by the collector and notice and demand made the lien promptly attaches to everything that person may thereafter earn or acquire until the tax is paid or the lien becomes ineffective by lapse of time. The Government's contention rests on 53 Stat. 448, 26 U. S. C. A. 3670, which provides that if any person liable to pay any tax refuses or neglects to pay the same after demand the amount "shall be a lien in favor of the United States upon all property and rights of property, whether real or personal, belonging to such person."

The Government issued no attachment of any charac-

ter and took no action of any character to subject the fund to the payment of the tax.

The claim of the Glass City Bank, on the other hand, is predicated on an attachment execution which issued out of the Court of Common Pleas of Allegheny County, Pennsylvania, on a judgment against Maddas, in which the Trustees in Bankruptcy for the Victor Brewing Company were named as garnishees (R. 7a).

The Bank's position is that since Section 3671 specifically provides that the lien of 3670 arises at the time the assessment list is received by the collector that the lien can attach only to existing property or rights of property of the taxable, and that the future earning power of a taxable is neither property nor a right of property to which a lien could attach. Other sections of the Revenue Act make specific provisions for subjecting after acquired property of the taxable either to a lien or to the payment of a tax.

The Bank further takes the position that since the Government failed within the time limited by law to either enforce any lien it might have had or to subject the property in suit to the payment of the tax that it lost its right to do so.

The case involves an important conflict between the decisions of the Circuit Court of Appeals for the Second Circuit on the one hand, and the decisions of the Circuit Court of Appeals for the Ninth Circuit on the other. The Circuit Court of Appeals for the Third Circuit, in deciding this case, followed the decision of the Ninth Circuit.

The Court of the Second Circuit, in the case of *United States v. Long Island Drug Company*, 115 F. (2) 983 (De-

cember 16, 1940) held that the Government's lien for taxes attached only to property in existence at the time the notice was filed and the levy made. It held that the lien did not attach to property which came into the taxpayer's hands or possession or to a salary that was earned after notice and after levy. In doing so, the Court followed the decision of this Court in the case of *Savings Bank of Danbury v. Loewe*, 242 U. S. 357, 37 S. Ct. 172, 61 L. Ed. 360, holding that in the absence of a statute to the contrary, it is the usual rule that a garnishment does not affect future earnings or salary.

The same principles were decided in the cases of *United States v. Warren Railroad Company*, U. S. C. A., Second Circuit, 1942, 127 F. (2) 134, and in *United States v. Western Union Telegraph Company*, Second Circuit, 50 F. (2) 102.

The Third Circuit, in deciding this case, relied on two decisions of the Ninth Circuit; *Citizens National Bank of Los Angeles v. United States*, C. C. A., Cal., 1943, 135 F. (2) 527, and *Nelson v. United States*, U. S. C. A., Ninth Circuit, 131 F. (2) 301.

The decision is also in decided conflict with the local laws of Pennsylvania. In Pennsylvania, as in virtually all States in the Union, the future earning power of an individual is not property. A person cannot assign or sell or pledge his future earning power, and it is, therefore, not the subject of a lien.

(B)

STATUTORY PROVISIONS SUSTAINING JURISDICTION

Section 240 (a) of the Judicial Code, 28 U. S. C. A. 347 (a) sustains the jurisdiction of this Court.

(C)

DATE OF JUDGMENT AND ORDER TO BE REVIEWED

The decree or judgemnt of the United States Court of Appeals for the Third Circuit affirming the judgment of the District Court of the United States for the Western District of Pennsylvania awarding the fund in dispute to the Government was rendered and entered December 29th, 1944 (R. 19). The time for filing petition for certiorari expires March 29th, 1945. This petition is filed within that time.

(D)

TIME AND MANNER IN WHICH QUESTIONS WERE RAISED BELOW

The District Court of the United States for the Western District of Pennsylvania restrained the Glass City Bank from pursuing its attachment execution in the State

Courts, and ruled that since its own Trustee was involved, jurisdiction to determine the disposition of the fund should be retained by the United States Court (R. 1a, 2a, 3a). This was followed by a petition of the Glass City Bank for a rule on the Collector of Internal Revenue and other parties involved to show cause why the fund should not be paid to the bank (R. 3a).

Answers were filed by the Collector of Internal Revenue and other parties involved, and a hearing was held before the Referee in Bankruptcy, who made findings of fact which were not in dispute in the Court below (R. 8a).

The District Court of the United States for the Western District of Pennsylvania awarded the fund to the United States, and the Circuit Court affirmed this decision (R. 16a, 22).

(E)

OPINIONS OF THE COURT BELOW

The opinion of the United States District Court for the Western District of Pennsylvania is reported in 54 F. Supp. 11, and the opinion of the United States Circuit Court of Appeals for the Third District is unreported at this time but is printed in the Record (R. 19).

(F)

QUESTIONS PRESENTED

Does the Government, by virtue of 53 Stat. 448, 26

U. S. C. A. 3670, which gives it a lien upon "all property and rights of property, whether real or personal, belonging to" the taxable, acquire a lien on such intangibles as the future earning capacity of the taxable?

Where a fund in the hands of a garnishee represents sums awarded to a taxable in a bankruptcy proceeding for services rendered while acting as a State Court Receiver and the services were all performed after the tax was assessed, and after notice and demand, and the Government takes no action whatever to subject the fund to the payment of the taxes, is the Government entitled to the fund in preference to an attaching creditor?

Where the Government is required to proceed to enforce its lien by distraint or by civil action within a definite time, and it fails to do so, or to show that the time was extended, does the Government lose its lien?

(G)

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

The questions here presented are of considerable importance to every employer, to every employee, and to every person engaged in trade of any kind.

A lien is something real. It is the hold or claim which one person has upon the property of another as security for some debt or charge. The lienor has the right to hold or detain the property until the claim or charge is satisfied.

The Statute in question gives the Government a lien

for unpaid taxes "upon all property and rights of property, whether real or personal, belonging to such person." It further specifies "The lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforcible by reason of the lapse of time." 53 Stat. 448 and 449, 36 U. S. C. A. 3670 and 3671.

The statute is thus specific that the lien arises at a particular time, namely, when the assessment list was received by the collector. If it is to exist at all, it must exist at that time. If it is to attach to property or rights of property, it must attach at that time.

In the case at bar, the assessment list was received by the collector August 12th, 1935, and notices and demands were made August 13th and August 24th, 1935 (R. 12a). The fund which is the subject of this litigation was not in existence at that time. The award was made to Maddas for services performed by him five years later, in 1940, while he was acting as a State Court Receiver for the Victor Brewing Company (R. 6a, 10a).

The decision of the Third Circuit can be upheld only on the ground that property and rights of property to which the lien attaches at the time the assessment list is received by the collector include the future earning capacity of the taxable as well as any property which he may thereafter acquire by any means whatsoever. Future earning capacity has never been considered either property or a right of property. It amounts to almost an absurdity to assert that the Government, in 1935, acquired a lien on something that did not exist and could not conceivably be ascertained until 1940.

That Congress did not intend the sections to have the effect given to them by the Court below is indicated, not only by the plain words of the Act, but by the numerous provisions made in subsequent sections for subjecting property of every character to the payment of the tax.

There is no doubt that the collector might have, by the issuance and service of a distraint warrant, subjected this particular fund to the payment of the tax, but he did not do so. Congress, by enacting these provisions which permit the Government to keep its lien alive and to subject after-acquired property, wages included, to the payment of the tax, indicates plainly that it never intended the language "property and rights of property belonging to the taxable at the time the assessment list is received by the collector" to include future earning capacity.

The property and rights of property to which the lien attaches when the assessment is made are admittedly entitled to a broad interpretation. Whatever right or dominion the taxable has over such things as are permitted by the State to be the subject of ownership are subjected to the lien if they belong to the taxable. When the assessment lists came into the hands of the collector, by the very nature of things, the property or right of property had to be something that the Government could lay hold of by one of the many processes made available to it. Neither the Government nor any other creditor can, by any execution process known in the United States, attach and sell a man's future earning power or his right to inherit, or in any manner acquire property in the future. Neither can a lien attach to such right.

If the Government ever had any lien on the fund in

suit in this case, it was lost because the collector failed, within the time limited by law, to enforce its lien. 53 Stat. 87, 26 U. S. C. A. 276, enables the collector to collect the tax by distraint or by a proceeding in court. The section specifies, however, that the collector may do this "only if begun" within six years after the assessment of the tax or prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer.

It appears definitely by the record in this case that no distraint or other proceedings were ever instituted by the Government, and there is no showing that an extension agreement was entered into. The limitation applies whether the Government has or does not have a lien.

This important conflict between the decisions of the Second Circuit on the one hand and the decision of the Third and Ninth Circuits on the other hand can be resolved only by this Court. The opportunities of people, against whom tax liens have been filed, to find employment will certainly be hampered if the Government has a lien on their future earning capacity, and consequently on any moneys they earn. What is the status of an employer who pays wages to an employee when the Government has a lien on such property? What is the position of a bank that pays out money which the taxable may have placed in the bank after the date of the assessment? What is the position of the automobile dealer who makes the trade of an automobile after the tax assessment? What is the position of any one who accepts property in the hands of a delinquent taxpayer? All these and many more questions are posed if the decision of the Third Circuit remains in force.

In Pennsylvania, as in practically all other States, possession of personal property is a badge of ownership. An individual who would subject personal property to a lien must reduce it to possession otherwise the lien is ineffective. If the decision of the Third Circuit is the law applicable in Pennsylvania then a species of secret lien has been created which is contrary to the whole policy of the law pertaining to liens.

Wherefore the petitioner respectfully prays that this Court issue a writ of certiorari to the Circuit Court of Appeals for the Third Circuit, directing said Court to certify to this Court for review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case as numbered and entitled upon the docket of said Court; and that the decree of the Circuit Court of Appeals affirming the decision of the District Court of the United States for the Western District of Pennsylvania be ordered set aside, and judgment entered awarding said fund to the petitioner, and that your petitioner be granted such other and further relief in the premises as to this Court may seem just and proper under the circumstances.

THE GLASS CITY BANK,
Jeannette, Pa.,
Petitioner.
By FRED B. TEESCHER,
Its Counsel of Record.

SUPPORTING BRIEF

SPECIFICATIONS OF ERROR

The petitioner assigns the following errors in the record and proceedings in this case:

The Circuit Court of Appeals for the Third Circuit committed fundamental error in affirming the judgment of the District Court because

The Act of Congress under which the Government claims, 53 Stat. 448, 26 U. S. C. A. 3670, made the tax a lien only "upon property and rights of property belonging to the taxable." 53 Stat. 449, 26 U. S. C. A. 3671, specifies that "the lien shall arise at the time the assessment list was received by the collector."

The fund which is the subject of this litigation and on which the Government seeks to fasten its lien was not in existence at the time the assessment list was received by the collector, and did not come into existence until five years later, when it was awarded to Maddas for services performed by him while acting as a State Court Receiver for a company which was later adjudicated a bankrupt.

The future earning power of a taxable is neither property nor a right of property within the meaning of 53 Stat. 448, 26 U. S. C. A. 3670, and moneys which a taxable thereafter earns or acquires are not subject to a lien unless specifically subjected by garnishment

or by distraint as provided by other sections of the Revenue Act.

Section 3670 is not self executing. Under 53 Stat. 87, 26 USCA 276, the government must proceed by distraint or by proceeding in court to subject property to the payment of the tax. No proceeding has ever been instituted by the government, and the time for instituting one has passed. If the government had a lien, it was lost before this proceeding was started by the Glass City Bank.

ARGUMENT

THE LIEN OF SECTION 3670 ARISES WHEN THE ASSESSMENT LIST IS RECEIVED BY THE COLLECTOR

The decision of the Circuit Court of Appeals for the Third Circuit in this case is in conflict with a decision of the Second Circuit on the same subject, and is in conflict with the applicable local law of Pennsylvania.

The decision of the Court below in this case holds that the Government has a lien on a fund which did not come into existence until five years after the tax was assessed and the assessment list received by the collector of Internal Revenue. The Acts of Congress under which the Government asserts its lien specify that the lien shall arise at the time the assessment list was received by the collector, and that the tax shall be "a lien in favor of the United States on all property and rights of property, whether real or personal, belonging to the taxable." The fund was awarded to the taxable, Mr. Frank A. Maddas, for services performed as a State Court Receiver. The decision of the Court below can be supported only on the theory that the future earning power of a taxable is property or a right of property to which the lien affixes at the time the assessment list was received by the collector.

The Acts of Congress under which the Government asserts a lien are as follows:

"If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person." 53 Stat. 448, 26 USCA 3670

"Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time," 53 Stat. 449, 26 USCA 3671

The Government neither issued nor served any distraint warrant nor garnishment proceedings to subject the fund to a lien or to possession so its rights depend squarely upon whether the future earning power of a taxable is property or right of property to which a lien attaches when assessment lists are received.

THE TAXABLE'S FUTURE EARNING POWER IS NOT PROPERTY OR A RIGHT OF PROPERTY AND CONSEQUENTLY IS NOT THE SUBJECT OF A LIEN

In the case of *United States v. Long Island Drug Company*, 115 F. 2d, 983 (December 16, 1940), the Circuit Court of Appeals for the Second Circuit decided definitely that the Government's lien for taxes attached only to property in existence at the time the notice was filed or the

levy made, and that it did not attach to property that came into the taxpayer's hands or possession or to a salary that was earned afterwards. In that case, the Government's position was much stronger than in the case at bar because it had issued and served on the Long Island Drug Company a distraint warrant, and had served a demand on the Long Island Drug Company requiring it to surrender all property or rights of property of the taxable. At the time of the service of the distraint, the taxable was in the employ of the Long Island Drug Company, and working under an existing contract of employment. The sections of the Internal Revenue Code, under which the Government thus sought specifically to acquire a lien are as follows:

> "If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with such interest and other additional amounts as are required by law, by distraint, and sale, in the manner provided in this subchapter, of the goods, chattels or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid." 53 Stat. 451, 26 USCA 3690
>
> "(a) Requirement. Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collection making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judgment process.

"(b) Penalty for violation. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not to surrender, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interests from the date of such levy." * * *

53 Stat. 456, 26 USCA 3710.

It will be observed that Section 3690 uses the words "goods, chattels of effects, including stocks, securities, bank accounts, and evidences of debt," while the latter section uses the words "property or rights to property", the same as section 3670.

The facts in that case were as follows: In May of 1933, the Commissioner of Internal Revenue assessed a distilled spirits tax against Charles Steinberg, et al. Demand was made July 14, 1933. On April 15, 1936, a notice of lien was filed in the clerk's office for the Eastern District of New York. On June 15, 1936, another notice specifying an additional amount for accrued interest was filed. On March 7, 1939, the Long Island Drug Company was served with notice of levy. When the notice of April 15, 1936 was filed, Steinberg was indebted to the Long Island Drug Company in account of overdrawn salary. After filing of the notice, Steinberg entered into an arrangement with the Drug Company under the terms of which the Drug Company was to advance certain sums to his wife and the salary as it was earned was to be applied on the note which was given to secure the loan. Steinberg also signed the note.

Between the filing of notice of 1936 and the service of the distraint in 1939, there accrued to Steinberg on account of salary an amount more than sufficient to take care of the government's claim. It, however, was less than the amount of the note and had been applied on the note. The District Court had entered judgment directing the Drug Company to pay, holding that the notice operated to give the government a lien on the salary which from time to time accrued to Steinberg. The Circuit Court reversed holding that the salary to be earned in the future, that is subsequent to the filing of the notice, is not the subject of a lien. On page 986, the Court said:

> "Though we shall assume that a salary or wages which have been earned may be made subject to a lien for unpaid taxes and also subject to distraint and levy, the situation in respect to future earnings is quite different. They are contingent upon performance of a contract of service and represent no existing rights of property. They are quite distinguishable from the right of a cestui que trust whose equitable life estate may be subjected to a lien on behalf of the government for unpaid taxes. Matter of Rosenberg's Will, 269 N. Y. 247, 199 N. E. 206, 105 A. L. R. 1238; United States v. Canfield, 9 Cir., 29 F. Supp. 734. In the same way they are distinguishable from a taxpayer's interest in an insurance policy upon his life, Kyle v. McGuirk, 3 Cir., 82 F. 2d, 212; Cannon v. Nicholas, 10 Cir., 80 F. 2d 934. Neight right of the taxpayer is contingent but is a fixed right to realize property or income derived therefrom dependent upon no future performance. Rights which do not exist at the time of the demand upon the taxpayer are not subject to any

lien, United States v. Pacific R. R. Co., Mo., 1 F. 97. Here there was no showing that the taxpayer had any claim against the Drug Company when the demand upon him for payment was made. * * *

In the absence of a statute to the contrary, it is the usual rule that a garnishment does not affect future earnings or salary. Savings Bank of Danbury v. Lowew, 242 U. S. 357, 37 S. Ct. 172, 61 L. Ed. 360. Moreover there would seem to be no justice in depriving the garnishee of its right to set off which, so far as the record shows were acquired for a valuable consideration before the demand was made on the Drug Company by the collector. Both on April 15, 1936, when payment was first demanded of the Drug Company, and on March 7, 1939, when the last demand was made, the latter owed no debt to Steinberg upon which distraint could be made. We find nothing in Section 3690 or Section 3710 which varies the general rule that a garnishee process is not to be extended to future earnings, but will reach an indebtedness which has accrued."

The Circuit Court of Appeals for the 2nd Circuit again recognized the principles contended for by the Glass City Bank in the case of *United States v. Warren Railroad Co.*, USCA, 2 Cir., 1942, 127 F. 2d, 134. In that case, the government sought to subject certain rentals to the payment of income taxes of the defaulting lessors of the railroad. No rentals were due when the levies were made. One of the questions before the Court was whether the government's lien attached to future rentals. The Circuit Court held that it did not. The Court, in its opinion, said:

"Finally, the government seeks to sustain the judgments upon the theory that it has a lien on the rentals accruing under the leases. It can, however, have no right under any theory beyond that of lessors themselves. In the United States v. Western Union Telegraph, 2 Cir., 50 F. 2d 102, we said rentals could not be reached because there could be no levy on intangible rights. But since that decision was rendered we have held that the indebtedness of a third party to a taxpayer is subject to distraint and upon demand must be surrendered to the collector by virtue of Sec. 3710, Title 26, USCA. Int. Rev. Code, United States v. Long Island Drug Co., 2 Cir., 115 F. 2d, 983. * * *

The difficulty with levying upon the rentals prior to their due date is because of the common law rule that a creditor cannot levy upon rent until it becomes payable. * * *

We cannot discover that at the time when the levies were attempted any rentals were due and payable, or that the lessee was in possession of any property of the lessors at the time the notice of lien and levy were served. Accordingly the judgments that the lessee, Lackawanna & Western Railroad Company, pay the amount of income taxes, interest and costs as a personal obligation were improper and should be reversed and the cases remanded to the District Court in order that the United States may file a supplemental petition for a judgment in each action providing: (1) That the lessee be enjoined from making further payments to the stockholders of the lessors out of any rentals now or hereafter payable until the United States shall, from time to time, have an opportunity to

levy thereon so that the income taxes and interest may be satisfied; (2) that the lessee pay to the collector the amount of rentals levied upon, from time to time, which may be necessary to satisfy the income tax obligations."

In discussing the Warren Railroad case, the District Court, in its opinion, attempts to construe it as supporting the Government's position (R. 14a). The contrary is true. The case specifically holds that future rentals are not the subject of a levy, and consequently not the subject of a lien. The Second Circuit reversed the District Court and wiped out the judgment which had previously been entered under Section 3710 of the Internal Revenue Code. The District Court further attempts to make an analogy between an existing lease and an existing employment (R. 15a). Both premise and the conclusion are incorrect. Future rentals are not the subject of attachment or lien because the lessor has no right or property in the rentals until they are due, as noted by the Court in the Warren case. Maddas was not a State Court Receiver at the time the lien arose. If the government has any lien, it arose when the collector received the assessment list on August 12th, 1935. Maddas did not become such a State Court Receiver until three years later, December 26th, 1938. (R. 6a). The fund which is the subject of dispute accrued to him for services performed between July 29th, 1939 and October 22nd, 1940 (R. 10a).

Congress, in specifying that the lien should arise at the time the assessment list was received by the collector, adopted almost the precise language used by the Court in the case of the *United States v. Pacific Railroad, et al.*, 1 F. 97. The Revenue Act of July 13, 1866, 14 St. at Large,

107, Rev. St. 3186, gave a similar lien on all property or rights of property belonging to the taxable from the time the tax was due. The Circuit Court of Appeals (E. D. Mo. March 13, 1880) held that the lien arose when the demand was made, and that it attached only to property then owned by the taxable. In disposing of the case, the Court, in its opinion, said:

> "But if, upon making demand now, at the end of 10 or 15 years from the time when the taxes were due, the government can establish a lien upon all property then owned by the delinquent taxpayers, it would result that in most cases not the guilty, but the innocent, would be made to suffer. Such a doctrine would also unsettle the titles to real estate, since it would be impossible to know or to ascertain whether the owner has not, during the existence of the income tax law, suppressed the truth as to his receipts and earnings, or made a false return thereof. In my opinion the language of the statute does not require the construction contended for by counsel for the government. If congress had intended to make the statute so far-reaching as to subject property in the hands of innocent purchasers, who became owners years before any step was taken by the government to assert its lien, this intention would have been plainly expressed. Such, however, is not the case. Let us examine the phraseology: 'If any person * * * liable to pay a tax, shall neglect or refuse to pay the same after demand, the amount shall be a lien in favor of the United States from the time it was due until paid, * * * upon all property, etc., belonging to such person,' etc. The

statute does not say 'upon all property which may have belonged to such person when the tax accrued'.

This or similar language would, I think, have been employed if congress had intended to give the statute this effect. It must be conceded that the words 'all property * * * belonging to such person' must be construed as referring to some time to be ascertained by the context; and it may also be conceded that we might, without doing violence to the language of the law, refer them to the time when the tax became due, and make the clause read 'all property, etc., belonging to such person, etc., at the time the tax became due.' This, however, does violence to the spirit of the act for reasons already stated. Another reading is authorized by the language, and is in harmony with the spirit, and that is the one I have adopted, namely, that the words in question refer to the time when the demand is made, and may be phrased thus: 'All property, etc., belonging to such person at the time such demand is made.' By this construction the lien, when it once attaches, relates back to the time when the tax was due, but it does not attach to the property transferred to innocent purchasers prior to demand. The view also harmonizes with the general policy of the law relating to land titles, which to protect the citizen against loss from secret liens, not disclosed by any public record nor ascertainable by due diligence. Nor is it unjust toward the government, for it is fair to presume that the government, armed as it is with so many agencies and appliances for ascertaining what taxes are due and unpaid, and from whom, and all-powerful as it is to enforce its rights, will, within reasonable

time, make demand, or take some steps in the direction of making collections, in all cases where there is delinquency. The government may protect itself by diligence if the view I take of the statute shall prevail; but, if the opposite view is sustained, the citizen who purchases real estate is absolutely without protection against possible liens for taxes of this character."

The decision of the Second Circuit is in complete harmony with the applicable local law. Under the law of Pennsylvania, future earnings are not regarded as property or a right of property. Future earnings, except under an existing contract, cannot be made the subject of an assignment, and consequently could not be the subject of a lien.

"A right presently existing but only to come into possession upon a contingency is assignable at law; but a mere expectancy, a right which, while it may grow out of present circumstances, has no present existence, does not pass by a voluntary assignment; as, for example, an interest in the estate of a person who is still living: Lennig's Estate, 182 Pa. 485. And rights growing out of circumstances which do not yet exist are not assignable at all, even for value, for there is no subject-matter on which to operate; as, for example, wages to be earned in an employment not yet begun and not yet contemplated."

Fisher's Estate, 14 Pa. D. & C. 89.

"The future earnings constituted a mere possibility, coupled with no interest. * * * To hold that the

right to collect the wages was continuous and irrevocable, as against all employes (should be employers) of Trumbower, would be monstrous, as it would put him in the absolute power of Laubach."

Trumbower, to use v. Ivey & Rapp, 2 Pa. C. C. Reports 470.

"An assignment of wages to be earned in the future executed when the assignor was not in the employment of the party from whom payment of the wages is demanded by virtue of the assignment, is void, as against public policy, and will not be enforced by the courts."

Woodring v. Lehigh Valley Railroad Co., 2 Pa. C. C. Reports 465.

"We are, however, clearly of the opinion that an assignment like the present one, which professes to transfer a debt to arise for wages not yet earned, against any person by whom the assignor may thereafter be employed, although followed by a subsequent notice of the assignment to such an employer, is insufficient, without acceptance, to make a valid transfer of the debt against the employer."

Jermyn v. Moffitt, 75 Pa. 399, 402.

The decisions of numerous other States are to the same effect. The following are examples: *Jules-Wallace & Co. v. R. A. Management*, 265 N. Y. Supp. 202, 148 Misc. 180; *Port v. Chicago & New York Railroad Company*, 156 N. W. 469, 471, 162 Wis. 446; *Walker v. Rich*, 249 Pac. 56, 79 Cal. App. 139; *Baust v. Fairfield Farms Dairy*, 148 A.

236, 158 Md. 280; *McKneeley v. Armstrong,* 210 S. W. 192, 109 Texas 363; *Emerson v. European etc. Railway Co.,* 67 Maine 387.

Since Section 3670 does not undertake to define the terms "property" and "rights of property", it is proper to turn to the State law for their meaning. *Poe v. Seaborn,* 282 U. S. 101, 118, 51 S. Ct. 58, 75 L. Ed. 239.

Counsel for the petitioner, Glass City Bank, respectfully asserts that the petitioner's position finds support in the decision in *Investment & Securities Company v. Robbins* (District Court E. D. Washington, N. D.) 49 Fed. Supp. 620, notwithstanding the fact that this decision is cited by the court below in support of its decision (R. 21). There the taxable was the owner of shares in a national bank. The bank was in receivership. By virtue of his ownership of the stock and the payment of a stock assessment, the taxable was entitled to a proportionate share of the proceeds resulting from the liquidation of the assets after creditors were paid in full. He had this right when the assessment list had been received by the collector February 18, 1934. The intervenor claimed by reason of an assignment which had been made three years later, July 27, 1937, notice of which had been given to the receiver or stockholders' agent March 14, 1938. The assignment specifically stated that it was subsequent and junior to the lien of the United States for taxes, if any existed. As the court well noted. "The intervenor, asserting as it does, that Rosenbush had an interest in those assets which he could pledge in 1937 can hardly be heard to say that he did not have an interest in those assets which could be subjected to a lien in 1934." After noting that under the Statute Sections 3670 and 3671, the lien came into existence when the assessment

list was received by the collector and that the lien attached to all property then owned by the taxable, and after noting that the property or right of property in dispute was at that time owned by the taxable, the Court says:

> "Property within the tax laws should not be given a narrow or technical meaning. Commissioner of Internal Revenue v. Stephens-Adamson Manufacturing Co., 7 Cir., 51 F. 2d 681; Where a right is subject to ownership or transfer and may be brought within the dominion and control of the court through some recognized process, it is property."

Applying that definition of property to the case at bar, Mr. Frank A. Maddas, in 1935, when, by the very words of the statute, the lien arose, had no right or interest in money or property which did not come into existence until five years later. In 1935, he had no ownership or right of property in money which he might or might not earn in some future employment. There was nothing which could then be brought within the dominion and control of the court through any recognized process.

The District Court, in deciding the case, did not consider its decision in conflict with United States v. Long Island Drug Company. The Court, on page 623, said:

> "There is nothing in the case of United States v. Long Island Drug Co., Inc. 2 Cir., 115 F. 2d, 983, 986, on which Intervenor relies, which runs counter to this conclusion. In that case, the moneys attempted to be subjected to the lien were wages earned by the taxpayer after the filing of the assessment list and the demand for payment and after levy upon the defendant. In that case, the court definitely recognized the

rule laid down in Re Rosenberg's Estate, supra., and in United States v. Canfield, supra. It used this language: 'They (future earnings) are contingent upon performance of a contract of service and represent no existing rights of property.' "

THE DECISION OF THE COURT BELOW COMPLETELY OVERLOOKS THE FACT THAT SECTION 3671 FIXES A SPECIFIC TIME WHEN THE LIEN OF 3670 ARISES, AND THAT SECTIONS 3678, 3690, 3710 AND 3692 PROVIDES A SPECIFIC METHOD BY WHICH AFTER ACQUIRED OR OTHER PROPERTY BELONGING TO THE TAXABLE AND NOT SUBJECT TO THE LIEN OF 3670 MAY BE SUBJECTED EITHER TO THE PAYMENT OF THE TAX OR MAY BE IMPRESSED WITH A LIEN

The other two cases relied upon by the Court below for its decision, it must be conceded are in conflict at least in principle with the decision of the Second Circuit and the position that the petitioner takes here. The things to which the government sought to fasten its lien in these cases were, first, an inheritance which had come into existence after the tax assessment had been received by the collector, and the second, a crop of grapes grown after the tax assessment had been made. It could well be that a distinction should be made on grounds of public policy between property which accrues to a taxable by reason of personal efforts, and property acquired in other ways. Counsel for the petitioner respectfully asserts that no such distinction is necessary because the reasoning upon which

the decision of the majority in Citizens National Bank of Los Angeles v. United States is based is unsupportable. The first reason assigned is that the Revenue Act formerly provided that the government's lien should continue until paid but this was amended to read "shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time," 53 Stat. 449, 26 U. S. C. A. 3671. The Court concludes that if the lien is not considered as applying to after acquired property, the amendment is meaningless for the lien would continue in any event as to property owned when the lien arose.

The duration of the lien, prior to the amendment, was indefinite, and it might exist for any period of time. The amendment put two very definite limitations on its life. Under the amendment, the lien ceases to exist when the tax is paid or when the six year limitation imposed by 53 Stat. 87, 26 U. S. C A. 276, is reached, unless the lien is extended by agreement. Certainly the duration of the lien has nothing whatever to do with the property to which it attaches. By the very language of Section 3671, the lien arises when the collector receives the assessment. Had congress intended Section 3671 to have the meaning ascribed to it by the Court in the Citizens National Bank case, and by the court below in this case, it would have changed the portion of the section that specifies when the lien begins, and not the portion of the section that provides for its termination. Had congress intended that after acquired was to be reached by the sweeping provisions of Sections 3670 and 3671, it would have used such language in 3671 as "the lien shall arise at the time the assessment list was received by the collector as to property and rights of property then owned by the taxable and from the date the taxable acquires the

property or right of property in the case of after acquired property, and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time."

The administrative interpretations relied upon by the Court in the Citizens National Bank case say nothing whatever about liens attaching to after acquired property. What they do is to admonish the collectors to make careful investigations as to whether the delinquent is likely to acquire property in the future and to obtain extensions so that appropriate action can be taken.

Congress, in subsequent sections of the Revenue Acts, has given collectors ample processes by which after acquired property may be either subjected to the lien of the taxes or seized and sold. 53 Stat. 450, 26 U. S. C. A. 3678 provides for a civil action whether distraint proceedings have been commenced or not. 53 Stat. 451, 26 U. S. C. A. 3690, provides for distraint and sale of almost every species of personal property. 53 Stat. 452, 26 U. S. C. A. 3692, authorizes the collector to levy on all property or rights of property "belonging to such person, or on which the lien provided in Section 3670 exists for the payment of the sum due * * *". This section certainly contemplates that the taxable may have some property which is not subject to the lien given in Section 3670, and that it may be desirable or necessary to obtain a lien on it.

If the construction contended for by the court below is correct, then no taxable could have any property at any time which is not subject to the lien. 53 Stat. 453, 26 U. S. C. A. 3709, provides for distraint on real estate. 53 Stat. 456, 26 U. S. C. A. 3710, makes provision for distraint on

property or rights of property in the possession of persons other than the taxable.

The regulations of the Treasury Department to which the Court refers as a partial basis for its interpretation—T. D. 4275, VIII—2 Cum. Bull. 167 (1929), reads, in part, as follows:

> "Tax liabilities frequently are unenforceable in fact for the time being, due to the temporary nonpossession by the taxpayer of discoverable property or property rights. In all cases the liability for the payment of the tax continues until satisfaction of the tax in full or until the expiration of the statutory period for collection, including such period as the taxpayer by consent in writing may agree with the Commissioner shall constitute the time which the tax assessed may lawfully be collected. Collectors should continue to investigate carefully all cases of delinquent taxpayers where notice of lien has been filed, with a view to obtaining, before the expiration of the collection period, such written consent for the extension of the collection period, whenever it is reasonably possible that the taxpayer may, in the future, acquire property or property rights from which the tax liability may be satisfied. * * *"

It is perfectly plain that the Treasury Department intended to instruct collectors to investigate carefully and to avail themselves of the remedies provided in the several sections of the Revenue laws in order to subject property or property rights to the payment of the tax. Certainly there is nothing in the language of the Bulletin that warrants the

supposition that the Treasury Department was interpreting Section 3670 to extend to and include after acquired property.

The next reason advanced by the Court in the Citizens National Bank case is that there is an analogy between a federal tax-lien and a judgment. In California, a judgment evidently automatically attaches to after acquired real estate. This is not the case in Pennsylvania. In Pennsylvania, the lien of the judgment attaches to after acquired real estate only when a writ of sci. fa. or a writ of fi. fa. is issued, and the lien of a judgment attaches to personalty only when the property is reached by a writ of fi. fa. or execution attachment. *Packer's Appeal*, 6 Pa. 277.

The Court below rejected this reasoning, saying:

> "This reason is inapplicable in the instant case for we are not here dealing with after acquired real estate." (R. 21)

IF A LIEN EVER EXISTED, IT WAS LOST

The government's claim is also defeated by its failure within the period permitted by law to take the action it was required to take to bring the fund within its possession or control.

Section 3670 is not self executing. It contains no provision for sale, and no provision under which the collector can automatically reduce the property or right of property to possession. To accomplish this, the government must resort to one or more of the methods of procedure provided

by congress. It may file a civil action to enforce a lien under Section 3678. It may proceed by distraint and sell under Section 3690, or under Section 3692, it may levy on all property and rights of property belonging to the taxable, or on which the government has a lien under Section 3670.

Distraint on real estate is provided for in Section 3700, and proceedings in the nature of execution attachment are set up under Section 3710.

The government is not only required to take some action in order to make the provisions of Section 3670 effective but it is required to do so within a definite time. 53 Stat. 87, 26 U. S. C. A. 276, provides:

> "Where the assessment of any income tax imposed by this chapter has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of six year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."

Almost ten years have elapsed since the tax was assessed in this case, and the government has not yet begun any proceedings by distraint or otherwise to reduce the fund in suit to possession. As heretofore noted, the collector received the assessment lists on August 12th, 1935. The collector was allowed six years from that date to en-

force the lien as to any property to which Section 3670 was applicable. Section 276 is specific that such proceedings can be maintained only if started within the period specified by the statute.

This proceeding was instituted, not by the government, but by the Glass City Bank. The bank had sought leave to proceed with its attachment execution in the State Court (R. 3a). On April 29th, 1942, the District Court, in an opinion which set forth that since its own Trustees were involved, jurisdiction to determine the disposition of the fund should be retained by the United States Court. (R. 3a). The bank was, therefore, restrained from proceeding in the State Court (R. 3a). This was followed by a petition of the Glass City Bank for a rule on the Collector of Internal Revenue, the First National Bank in Greensburg, (a claimant under an assignment), and the Trustees for the Victor Brewing Company, and upon F. A. Maddas, the taxable, to show cause why the fund should not be paid to the Glass City Bank (R. 5a). Answers were filed by the several parties involved, and the Collector of Internal Revenue was thus, for the first time, brought upon the record (R. 8a). The six year limitation imposed by the Act had then passed, and if the United States ever had a lien on this fund, it was then lost.

The government asserted its claim, and based it on Section 3670, but made no effort to show either that an appropriate proceeding had been started within the six year period or that the period of limitations had been waived.

Since the government claims a lien, it was incumbent upon it to show, first, that the lien attached to the fund at some time, and second, that it had not ceased to exist by

operation of law. If the government claimed that a valid extension agreement had been entered into, it had the burden of showing this. *United States v. Wigmore* (D. C. Cal. 1943), 48 F. Supp. 250.

SUMMARY

This court is concerned with the interpretation and application of the law as it finds it; and is under no duty, and has no right to question the Acts of Congress beyond the plain limits of the language employed by congress. An examination of the cases that have arisen under Section 3670 that there was ample reason for the language of Judge McCarey in the case of *United States v. Union Pacific Railroad et al.*, 1 F. 97, when he said:

> "This view also harmonizes with the general policy of the law relating to land titles, which is to protect the citizen against loss from secret liens, not disclosed by any public record nor ascertainable by due diligence. Nor is it unjust toward the government, for it is fair to presume that the government, armed as it is with so many agencies and appliances for ascertaining what taxes are due and unpaid, and from whom, and all-powerful as it is to enforce its rights, will, within reasonable time, make demand, or take steps in the direction of making collections, in all cases where there is delinquency."

What was said there with respect to land title applies with even greater force to personalty. In Pennsylvania,

and in practically every other State in the Union, possession of personal property has always been the badge of ownership. Liens and pledges of personal property, unaccompanied by possession are virtually unknown. When a garage man or mechanic parts with possession of the machine he has repaired, he loses his lien. The same is true of a banker who relinquishes pledged securities. Possession is essential to a lien on chattels. *Clemson v. Davidson,* 5 Binn. 392.

It required an act of assembly to validate conditional sales in Pennsylvania, and such sales are valid only as to particular property and under certain circumstances, and when the conditional sales agreement is recorded. *Anchor Concrete Machinery Company v. Pennsylvania Brick & Tile Company;* 292 Pa. 86, 90, 91.

In *Mitchell et al. v. Standard Repair Company,* 119 A. 410, 275 Pa. 328, the Supreme Court of Pennsylvania, after reviewing a number of instances in which liens are allowed on personal property, thus giving the lien holder a right to possession as against the owner, said:

> "The commercial customs of today do not favor the tying-up of personal property by liens; and if the courts should now countenance any such general attitude toward the credit system as that announced in the case relied on by appellant, business, as that term is presently understood, would come to a standstill; * * *."

Returning to the cases decided under Section 3670, the Court will find that the contests are seldom between taxables and the government but are between innocent pur-

chasers, pledgees, mortgagees or judgment creditors and the government. Taxables, innocently in practically all cases, have sold or pledged or mortgaged their property and received the money and disposed of it. The government asserts a prior lien on the property and in a large number of cases has been successful. The result has been that the taxpayer goes free and an innocent person suffers.

If the statute is extended by an artificial interpretation beyond the plain words employed by congress, then an even greater number of innocent persons will be required to pay. Our economic system is such that the greatest measure of freedom must be given to citizens to trade and work and employ unhampered by a secret lien which the government may months or years later assert.

If the interpretation placed on 3670 by the Court below is permitted to stand, it will be increasingly difficult for any person against whom a tax lien has been filed to get a new start or even to obtain employment. It would be hazardous for any one engaged in business or trade of any kind to deal with him.

If 3670 is as sweeping and broad and as all inclusive as stated by the Court below, then it ought to be declared so to be by this Court. Neither the Government nor people who, in the ordinary course of business, must deal with others against whom tax liens have been filed ought to be left under the doubt that must arise from the conflicting decisions on the same subject by different Circuits.

Congress, in plain words, has definitely fixed the time when the lien arises. In unmistakable terms, it has stated that the lien of Section 3670 affixed itself to property of the bankrupt at the time the assessment list is received

by the collector. This can apply only to existing property.

Under the decisions of the Pennsylvania Courts, and the Courts of many other States, future earning power is not property.

The fiction adopted by the Court below that the lien attaches to after acquired property is in direct conflict with the statute which provides when the lien shall arise. Congress has expressly recognized that a taxable may own or acquire property not subject to the lien covered by Section 3690, and has empowered the collector by civil action (Section 3678), by distraint (Section 3690), or by levy (Section 3692) to acquire a lien on such property or to subject it to the payment of the tax. These remedies are given not only to enforce a lien which the Government may have against a property but "to subject any such property * * * to the payment of such tax." (Sections 3678, 3692). Until the collector has resorted to one of these methods, the Government has no lien on after acquired property.

Moreover, Congress has definitely limited the life of the lien by Section 3670 by requiring the Government to proceed by distraint or by civil action, or by one of the other methods enacted for the enforcement of its lien within six years from the time the lien was acquired.

If the Government ever had a lien in this case, it acquired it August 12th, 1935, and lost it August 12th, 1941. Having failed to take any action to enforce its lien or to show that the time for enforcement had been extended as provided in the Act, any right which ever existed is now lost.

It is, therefore, respectfully submitted that the decision of the Third Circuit should be reviewed by this Court, and the Order there made reversed, and judgment entered for the petitioner, Glass City Bank.

FRED B. TRESCHER,
Counsel for Petitioner, Glass City Bank.

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No. 1082

In the Supreme Court of the United States

OCTOBER TERM, 1944

GLASS CITY BANK OF JEANNETTE, PENNSYLVANIA, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OCTOBER TERM, 1944

No. 1082

GLASS CITY BANK OF JEANNETTE, PENNSYLVANIA, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 9–15) is reported at 54 F. Supp. 11. The opinion of the Circuit Court of Appeals (R. 19–22) is reported at 146 F. 2d 831.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 29, 1944 (R. 23). The petition for a writ of certiorari was filed on March 26, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial

Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether tax liens of the United States, under the provisions of Section 3671 of the Internal Revenue Code, attach to property rights accrued after the tax liens arose.

STATUTES AND TREASURY DECISION INVOLVED

The pertinent statutes and Treasury Decision involved are set forth in the Appendix, *infra*, pp. 11–15.

STATEMENT

The undisputed facts as found by the District Court may be briefly summarized as follows:

Frank A. Maddas was appointed equity receiver of the Victor Brewing Company in proceedings in the Court of Common Pleas, Westmoreland County, Pennsylvania, and served in that capacity from December 28, 1938, to October 22, 1940 (R. 10).

On October 4, 1940, a petition was filed in the United States District Court for the Western District of Pennsylvania, for a reorganization of the Victor Brewing Company under Chapter X of the Bankruptcy Act, as amended. On January 31, 1941, the debtor was adjudicated bankrupt. (R. 10.)

On June 13, 1941, Maddas filed an application for allowance of receiver's fees and was allowed

the total sum of $15,000 by the referee. He had received some payments which left a balance due of $3,228.53, which sum is held by the trustees in bankruptcy. (R. 10.)

On February 15, 1941, petitioner secured a judgment against Maddas in the Court of Common Pleas of Allegheny County, Pennsylvania, for $19,041.75. On February 21, 1941, without first securing leave of the bankruptcy court, petitioner issued an attachment-execution out of the state court summoning the bankruptcy trustees as garnishees. The trustees opposed these proceedings and filed an application in the United States District Court to enjoin the same. (R. 10–11.)

On April 2, 1942, the District Court enjoined the petitioner from proceeding with its attachment-execution (R. 11).[1] Later petitioner again sought leave to proceed, but on April 29, 1942, the application was denied.[2]

Prior thereto, on October 23, 1940, the District Court entered an order restraining all creditors of the debtor Victor Brewing Company (R. 11)—

> from interfering in any manner with the discharge by the trustees of their duties and the management of the business and property of the debtor, and from interfering in any manner during the pendency of this proceeding with the exclusive jurisdic-

[1] *In re Victor Brewing Co.*, 48 F. Supp. 905 (W. D. Pa.).
[2] *In re Victor Brewing Co.*, 48 F. Supp. 907 (W. D. Pa.).

tion of this Court over the debtor and such property and assets.

There are outstanding against Maddas, federal income taxes for the years 1920, 1921 and 1922, in the aggregate amount of $1,258,671 assessed on August 10, 1935. The Collector received the assessment lists on August 12, 1935, and made notices and demands on August 13 and 24, 1935. Notices of tax liens were filed on July 27, 1939, and July 29, 1939. (R. 12.) There are also outstanding against Maddas federal income taxes for 1936 in the sum of $9,129.72, assessed on January 17, 1941. The Collector received the assessment list on January 20, 1941.[3] Notices and demands were made on January 21, 1941, and February 3, 1941. Notices of tax liens were filed on April 4 and April 7, 1941. (R. 12.)

The case came before the District Court on certificate to review an order of the referee in bankruptcy dealing with the $3,228.53 awarded to Maddas as receiver of the Victor Brewing Company. The order directed the payment of an $800 note given by Maddas to the First National Bank of Greensburg, Pennsylvania, and ordered the balance of $3,228.53 to be paid to the Collector of Internal Revenue. The United States filed a petition to review this order, claiming that the

[3] The dates appearing in the record July 29, 1938, and January 20, 1943, are apparently typographical errors and should be as set out above.

entire $3,228.53 should be paid to the Collector. Petitioner, a claimant by reason of the attachment-execution (see Statement, *supra*, p. 2), also sought a review of this order, claiming the entire fund should be awarded to it. (R. 9–10.) The District Court held that the United States was entitled to priority over petitioner and the First National Bank of Greensburg, as to the entire fund (R. 16–17).[1] The Circuit Court of Appeals affirmed (R. 23).

ARGUMENT

The case was correctly decided and there is no occasion for further review.

The court below held that the federal tax liens for 1920, 1921, and 1922, which arose before the receiver's fees accrued, attached to those fees when Maddas, the taxpayer, acquired the right to the same. Notices of these tax liens were duly filed by the Collector under Section 3672 of the Internal Revenue Code (Appendix, *infra*, pp. 11–12) prior to petitioner's judgment and were therefore effective against judgment creditors. Petitioner does not claim priority if the liens attached to after-acquired property or rights to property, as we hereinafter contend.

After the liens for these taxes once arose, they continued by their own force under the provisions

[1] The First National Bank of Greensburg took no appeal.

of Section 3671 of the Internal Revenue Code (Appendix, *infra*, p. 11) "until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time." This language has been consistently construed to mean that if the liens are to "continue" they attach to property either owned by or which may be later acquired by the taxpayer. *Citizens Nat. Trust & S. Bank of Los Angeles* v. *United States*, 135 F. 2d 527 (C. C. A. 9th); *Nelson* v. *United States*, 139 F. 2d 162 (C. C. A. 9th), certiorari denied, 322 U. S. 764; *Investment & Securities Co.* v. *United States*, 140 F. 2d 894 (C. C. A. 9th).[5]

Petitioner in its brief (Pet. 15–19) urges that the decision below conflicts with *United States* v. *Long Island Drug Co.*, 115 F. 2d 983 (C. C. A. 2d). In that case the United States sued the defendant Drug Company to enforce the statutory penalty provided in Section 3710 of the Internal Revenue Code (Appendix, *infra*, p. 13) for refusal to surrender property or rights in property subject to distraint. It was contended that

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[5] See also *United States* v. *Worley* (S. D. Ind.), decided March 8, 1940 (1940 C. C. H. par. 9694); *Graves* v. *Commissioner*, 12 B. T. A. 124, 132–133; *Matter of Rosenberg*, 269 N. Y. 247, 199 N. E. 206, certiorari denied, 298 U. S. 669; *United States* v. *Canfield*, 29 F. Supp. 734 (S. D. Cal.), appeal dismissed *sub nom. Security First Nat. Bank of Los Angeles* v. *United States*, 113 F. 2d 491 (C. C. A. 9th); *Minnesota Mut. Life Ins. Co.* v. *United States*, 47 F. 2d 942 (N. D. Tex.); T. D. 4275, VIII–2 Cum. Bull. 167 (1929) (Appendix, *infra*, pp. 14–15); G. C. M. 4715, VII–2 Cum. Bull. 94 (1928).

the defendant employer had refused to surrender to the Collector wages due defendant's employee Steinberg against whom federal tax liens were outstanding. The undisputed facts there showed that when the tax liens arose and the first notice and demand were made on April 15, 1936, the defendant owed Steinberg no wages, and the court held that the contingent right of the taxpayer to receive future wages did not create a property right in the possession of the employer. Although the opinion may say that liens do not attach to after-acquired property,[6] that was not the basis of the decision. The decision was rested on the ground that the employer's obligation under Section 3710 (Appendix, *infra*, p. 13) did not arise unless the employer held property of the taxpayer on the very day that the Collector's demand was made. Thus the decision would have been the same even if the court had been of the view that tax liens do attach to after-acquired property. Furthermore, the Second Circuit did not discuss Section 3671 of the Internal Revenue Code in its opinion. We submit that the cases are therefore distinguishable. This was recognized by the court below and in *Citizens Nat. Trust & S. Bank of Los Angeles* v. *United States*, 135 F. 2d

[6] The court's language was (115 F. 2d at p. 986): "Rights which do not exist at the time of the demand upon the taxpayer are not subject to any lien. United States v. Pacific R. R., C. C. Mo., 1 F. 97." We have discussed that case, *infra*, pp. 8–9.

527 (C. C. A. 9th). *United States* v. *Warren R. Co.*, 127 F. 2d 134 (C. C. A. 2d), was a similar case under Section 3710 of the Internal Revenue Code. There the taxpayer's inability to recover rents which had not accrued resulted in a holding that the lessee held no property of the taxpayer on the day of the levy and thus the derivative right of the United States could not be recognized. However, the court held that because the United States did have tax liens against the lessor it was entitled to an injunction restraining the lessee from paying future rentals to the lessor's stockholders. Hence the court necessarily concluded that the liens attached to after-acquired property. Otherwise it would not have restrained the lessee in order to permit the Collector to levy on the property rights in rentals.

Petitioner asserts (Pet. 4) that the lower court's decision conflicts with *United States* v. *Western Union Telegraph Co.*, 50 F. 2d 102 (C. C. A. 2d). The statement in that case restricting the tax lien to tangible property only has generally been repudiated by the courts and in the later case of *United States* v. *Long Island Drug Co.*, 115 F. 2d 983, 986 (C. C. A. 2d), the court referred to this dictum as being "based on a too narrow reading of the statute and cannot be taken as authoritative."

The case of *United States* v. *Pacific Railroad*, 1 Fed. 97 (C. C. E. D. Mo.) (see fn. 6, *supra*,

p. 7), is not in point, since it did not involve an after-acquired property question and was decided under a statute containing substantially different provisions than here involved. See *Citizens Nat. Trust & S. Bank of Los Angeles* v. *United States*, 135 F. 2d 527, 529–530 (C. C. A. 9th).

Petitioner asserts (Pet. 32–35) that more than six years elapsed from the date of assessment of the taxes for 1920, 1921 and 1922, and that therefore under Section 276 (c) of the Internal Revenue Code (26 U. S. C. Sec. 276 (c)) the Government lost its lien. Petitioner raised no question either in the District Court or the Circuit Court of Appeals as to the insufficiency or invalidity of consents or waivers executed by Maddas extending the period of the statute of limitations.[1] The evidence taken before the referee is not incorporated in the record in this Court. Petitioner waived any question as to the validity of the tax waivers by not presenting the issue in the courts below. *Sonzinsky* v. *United States*, 300 U. S. 506; *New York Dock Co.* v. *Poznan*, 274 U. S. 117.

Even if petitioner should prevail on the questions raised in its petition, it would be confronted with tax liens for 1936 which arose after the receiver's fees accrued and concerning which no

[1] At the hearing before the referee the Government introduced in evidence tax waivers executed by Maddas extending the statute of limitations beyond the hearing date and clearly showing that these taxes were not barred.

question of after-acquired property is involved.* The District Court held that aside from the liens for 1920, 1921, and 1922, the Government was entitled to priority over petitioner because petitioner's unauthorized attachment gave it no rights in the fund and also because petitioner had no right to garnish the receiver's fees under Section 886, Purdon's Pennsylvania Statutes, Title 42 (Appendix, *infra*, pp. 13–14). The Circuit Court of Appeals did not pass on these questions although it expressed the view that it was highly doubtful whether any right to garnish the fees existed under the statute (R. 22).

CONCLUSION

The decision is correct and there is no conflict. The petition should therefore be denied.

Respectfully submitted.

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APRIL 1945.

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* These liens are for $9,129.72 (R. 12), and only $3,228.53 was due Maddas as receiver's fees (R. 9).

APPENDIX

Internal Revenue Code:

SUBCHAPTER B—LIEN FOR TAXES

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. (26 U. S. C. Sec. 3670.)

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. (26 U. S. C. Sec. 3671.)

SEC. 3672. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

[As amended by Sec. 401 of the Revenue Act of 1939, c. 247, 53 Stat. 862.]

(a) *Invalidity of Lien Without Notice.*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under State or Territorial Laws.*—In accordance with the law of the State or

Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; or

(2) *With Clerk of District Court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or

(3) *With Clerk of District Court of the United States for the District of Columbia.*—In the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to lien is situated in the District of Columbia.

(b) * * * * *

(3) *Applicability of Subsection.*—Except where the lien has been enforced by a proceeding, suit, or civil action which has become final before the date of enactment of the Revenue Act of 1939, this subsection shall apply regardless of the time when the mortgage, pledge, or purchase was made or the lien arose. (26 U. S. C. Sec. 3672.)

SEC. 3692. LEVY.

In case of neglect or refusal under section 3690, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property and rights to property, except such as are exempt by the preceding section, belonging to such person, or on which the lien provided in section 3670 exists, for the payment of the sum due, with interest and penalty for nonpayment, and also of such further sum as shall be sufficient for the fees, costs, and

expenses of such levy. (26 U. S. C. Sec. 3692.)

SEC. 3710. SURRENDER OF PROPERTY SUBJECT TO DISTRAINT.

(a) *Requirement.*—Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) *Penalty for Violation.*—Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

(c) *Person Defined.*—The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. (26 U. S. C. Sec. 3710.)

Purdon's Pennsylvania Statutes, Title 42:

SEC. 886. ENTRY OF JUDGMENT ON ADMISSION OF ASSETS.

If the garnishee in his answers admit that there is in his possession or control property of the defendant liable under

said act to attachment, then said magistrate may enter judgment specially, to be levied out of the effects in the hands of the garnishee, or so much of the same as may be necessary to pay the debt and costs: Provided however, That the wages of any laborers, or the salary of any person in public or private employment, shall not be liable to attachment in the hands of the employer. (1845, April 15, P. L. 459. Sec. 5.)

T. D. 4275, VIII–2 Cum. Bull. 167 (1929):

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF
INTERNAL REVENUE,
Washington, D. C.

To Collectors of Internal Revenue and Others Concerned:

Section 3186 of the Revised Statutes, as amended, is further amended by section 613 (entitled "Lien for taxes") of the Revenue Act of 1928 to read as follows:

* * * * * *

In accordance with the provisions of subsections (c) and (e), *supra*, the following regulations are hereby prescribed:

The collector of internal revenue to whom is charged an assessment in respect of any internal-revenue tax shall issue a certificate of release of the tax lien whenever he finds that the liability for the amount assessed (together with all interest in respect thereof) has been satisfied or has become unenforceable. The word "unenforceable" as here used means unenforceable as a matter of law, and not merely uncollectible or unenforceable as a matter of fact. Tax liabilities frequently are unenforceable in fact for the time being, due

to the temporary nonpossession by the taxpayer of discoverable property or property rights. In all cases the liability for the payment of the tax continues until satisfaction of the tax in full or until the expiration of the statutory period for collection, including such period as the taxpayer by consent in writing may agree with the Commissioner shall constitute the time within which the tax assessed may lawfully be collected. Collectors should continue to investigate carefully all cases of delinquent taxpayers where notice of lien has been filed, with a view of obtaining, before the expiration of the collection period, such written consent for the extension of the collection period, whenever it is reasonably possible that the taxpayer may, in the future, acquire property or property rights from which the tax liability may be satisfied.

* * * * *

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 50

GLASS CITY BANK OF JEANNETTE, PENNSYLVANIA, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court (R. 7–12) is reported at 54 F. Supp. 11. The opinion of the Circuit Court of Appeals (R. 15–18) is reported at 146 F. 2d 831.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 29, 1944. (R. 19.) The petition for a writ of certiorari was filed on March 26, 1945, and was granted on May 7, 1945. (R. 21.) The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether under Sections 3670 and 3671 of the Internal Revenue Code liens of the United States for income taxes attached to a receiver's fee which was earned and allowed after the tax liens came into force.

2. Whether the liens are effective as against subsequent claimants without steps to enforce them by attachment or distraint.

STATUTES AND ADMINISTRATIVE RULINGS INVOLVED

The applicable statutes and administrative rulings are set out in the Appendix, *infra*, pp. 41–55.

STATEMENT

The facts as found by the District Court may be stated as follows:

One Frank A. Maddas was appointed equity receiver of the Victor Brewing Company in proceedings in the Court of Common Pleas of Westmoreland County, Pennsylvania. He served in that capacity from December 28, 1938, to October 22, 1940. (R. 7.)

On October 4, 1940, a petition was filed in the United States District Court for the Western District of Pennsylvania for a reorganization of the Victor Brewing Company under Chapter X of the Bankruptcy Act, as amended. On January 31, 1941, the debtor company was adjudicated a bankrupt. (R. 8.)

On June 13, 1941, Maddas filed an application with the bankruptcy court for an allowance of receiver's fees and was allowed by the referee the total amount of $15,000 for his services as receiver. Maddas had previously been paid the amount of $11,771.47 through order of the Common Pleas Court, which left a balance due him of $3,228.53, which sum is now held by the trustees in bankruptcy. (R. 8.)

On February 15, 1941, petitioner (hereinafter referred to as the Bank) obtained a judgment against Maddas for $19,041.75 in the Court of Common Pleas of Allegheny County, Pennsylvania. On February 21, 1941, without first securing leave of the bankruptcy court, the Bank issued an attachment execution out of the state court summoning the trustees in bankruptcy as garnishees. The trustees opposed the garnishment and filed an application in the bankruptcy court to enjoin the proceedings. (R. 8.)

Prior to the garnishment, on October 23, 1940, the bankruptcy court had entered an order providing in part as follows (R. 8):

> All creditors and stockholders of the debtor and all persons whomsoever are hereby enjoined and restrained in any manner whatsoever from interfering with money, property or assets of which the trustees shall be entitled to take possession, and from interfering in any manner with the discharge by the trustees of their duties and the management of the business and property of the

debtor, and from interfering in any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over the debtor and such property and assets.

On April 2, 1941, the bankruptcy court enjoined the Bank from proceeding with its attachment proceedings. Later the Bank again sought leave to proceed with its attachment proceedings, but on April 29, 1942, this application was denied.[1] (R. 8.)

The United States has outstanding against Maddas a claim for unpaid Federal income taxes for the years 1920, 1921, and 1922 in the aggregate amount of $1,258,671 which were assessed on August 10, 1935.[2] The Collector received the assessment lists on August 12, 1935, and gave notices and demands for payment of the taxes on August 13 and August 24, 1935. Notices of tax liens were filed with the Clerk of the United States District Court on July 27, 1939, and with the Prothonotary of Westmoreland County, Pennsylvania, on July 29, 1939. (R. 9, 16.)

The United States also has outstanding against Maddas a claim for unpaid income tax for 1936 in the amount of $9,129.72, which was assessed on January 17, 1941. The Collector received the assessment list on January 20, 1941, and gave

[1] See opinions at 48 F. Supp. 905 and 907.

[2] The validity and timeliness of this assessment of taxes (which was based on fraud) were established in *Maddas* v. *Commissioner*, 40 B. T. A. 572, affirmed 114 F. 2d 548 (C. C. A. 3d).

notices and demands for payment of the tax on January 21, 1941, and February 3, 1941. Notices of tax liens were filed with the Clerk of the District Court and the Prothonotary named in the preceding paragraph on April 4 and 7, 1941, respectively. (R. 9.)

The case came before the District Court on certificate to review an order of the referee in bankruptcy disposing of the amount of $3,228.53 awarded to Maddas as his receiver's fee. The order directed the payment first of an $800 note given by Maddas to the First National Bank of Greensburg, Pennsylvania, and ordered the balance of the $3,228.53 to be paid to the collector of Internal Revenue. The United States filed a petition to review this order, claiming that the entire $3,228.53 should be paid to the Collector to apply on Federal tax liens against Maddas. (R. 7.) The petitioner Bank, a claimant to the fund by reason of the attachment execution issued February 19, 1941, on its judgment, as stated above, also sought a review of the order, claiming the entire fund should be awarded to it. (R. 7.)

The District Court's order granted priority to the United States over both the petitioner Bank and the First National Bank of Greensburg as to the entire fund. (R. 12–13.) Upon the petitioner Bank's appeal from this order,[1] the Circuit Court

[1] The First National Bank of Greensburg took no appeal from the District Court's order of distribution; hence its rights as a creditor of Maddas are not involved in this case.

of Appeals for the Third Circuit affirmed. (R. 15–18.)

SUMMARY OF ARGUMENT

I

The lien of the United States for 1920, 1921 and 1922 taxes antedates any rights to the receiver's fee of the delinquent taxpayer, Maddas, which the Bank may have acquired by attachment proceedings pursuant to its judgment against Maddas. Consequently if the lien attached to Maddas's right to the fee, when earned, as after-acquired property, the United States is entitled to the fund here involved.

It has quite uniformly been held that the tax lien captures after-acquired property. This conclusion is compelled by the language of the statute creating a sweeping lien upon "all property and rights to property whether real or personal" belonging to the delinquent taxpayer. No property acquired and owned while the lien is effective may be excepted under this language. An amendment in 1936 to the present Section 3678 of the Internal Revenue Code, providing for an action to enforce the lien, and an amendment in 1928 to Section 3670 creating the lien, evidence Congressional recognition that the lien extends to after-acquired property. Administrative interpretations to the same effect have received the implied approval of Congress through the retention of the statute without change in this respect,

despite other amendments. The analogy of judgment liens, which embrace after-acquired property of such a nature that it would have been subject to lien if owned at the time of judgment, points to the same conclusion.

The dicta in two decisions, stating that after-acquired rights are free of the Government's tax lien, are not persuasive. Neither case turned upon the question or gave it full consideration. Moreover the dictum of the Circuit Court of Appeals for the Second Circuit in one of these cases is inconsistent with later decisions of the same court.

Nothing in the pertinent statutes or their legislative history suggests that claims for salary or wages previously earned are not property or a right to property subject to the lien for taxes. The policy of state statutes limiting or exempting compensation for personal services from attachment, like the analogous policy in respect to homesteads, has not been embodied in the Internal Revenue Code. State statutes clearly do not limit the United States in collecting its taxes, unless they have been made applicable by act of Congress. The lien does not have an adverse effect on business dealings with a taxpayer, since it attaches to the taxpayer's claims for money and not to the correlative obligations of third persons to him. Obligations to a taxpayer may therefore be incurred and paid without fear of liability to the Government, unless payments are made after

notice and demand by the collector upon the debtor. Possible hardship to third persons is, moreover, not a ground for restricting the Government's statutory rights by judicial decision.

II

The Government's tax lien is fully operative from the time the statutory steps to establish it are taken. As against judgment creditors the final step needed is the filing of notice, which in this case preceded the Bank's judgment. The Government's lien required no attachment or distraint to render it effective. It was asserted in this case by filing a claim with the trustees in bankruptcy.

III

The Government made the alternative contention in the court below that its lien for 1936 taxes, as distinguished from its liens for the years 1920, 1921, and 1922, should prevail over the Bank's claim for independent reasons, even if the liens for the earlier years were held not to embrace Maddas's after-acquired right to the receiver's fee. The Circuit Court of Appeals, however, did not pass upon the questions involved in this contention, resting its judgment instead upon the application of the liens to after-acquired property. The questions involved are complex and require consideration of state statutes and decisions, among other authorities. We refrain from pre-

senting these points in this Court and respectfully suggest that, if the judgment of the Circuit Court of Appeals cannot be affirmed upon the grounds which have been argued, the case be remanded for further consideration by that court.

ARGUMENT

I

THE TAX LIEN OF THE UNITED STATES EMBRACES PROPERTY AND RIGHTS TO PROPERTY, INCLUDING CLAIMS FOR COMPENSATION FOR PERSONAL SERVICES, ACQUIRED AFTER THE LIEN CAME INTO EFFECT

The Bank claims the fund here involved, consisting of the receiver's fee earned by Maddas prior to October 22, 1940, by virtue of an attachment execution issued February 21, 1941, on a judgement obtained by it against Maddas on February 15, 1941. The United States bases its claim primarily upon its liens for unpaid taxes for the years 1920, 1921, and 1922, notices of which were filed in 1939.[4]

Section 3670 of the Internal Revenue Code (*infra*, p. 42) provides in substance that if any person fails to pay a tax after demand, the amount thereof shall be a lien in favor of the United States upon all property and rights to

[4] The United States claims alternatively because of its lien for 1936 taxes, which became effective after Maddas's services as receiver had been fully performed. Since the Circuit Court of Appeals did not pass upon the questions involved in this claim, we do not discuss them in this brief for reasons which are more fully stated below. See *infra*, pp. 35–40.

property, whether real or personal, belonging to the taxpayer. Section 3671 (*infra*, p. 42) provides that the lien arises at the time the assessment list is received by the collector and continues until the liability for the tax is satisfied or becomes unenforceable by lapse of time. Section 3672 (*infra*, pp. 42–44) provides that the lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice has been filed by the collector under a law of the State in which the property is situated authorizing the filing, or, if there is no such law, in the office of the clerk of the United States district court for the district in which the property is situated.

By virtue of these sections, the United States on August 12, 1935, the date on which the collector received assessment lists for 1920, 1921, and 1922 taxes in the aggregate amount of $1,258,671, acquired liens upon all property and rights to property of Maddas. These liens became valid as against other claimants to the property on July 29, 1939, the date on which notices were filed with the Prothonotary of Westmoreland County under Pennsylvania law. These liens continue in effect until the tax liability is satisfied or becomes unenforceable by lapse of time.[5]

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[5] As pointed out above (fn. 2, p. 4), it was established in *Maddas* v. *Commissioner*, 40 B. T. A. 572, affirmed, 114 F. 2d 548 (C. C. A. 3d), that the taxes were due from Maddas and that the assessment was not barred by the statute of limitations since Maddas's returns for the years 1920, 1921, and

(Continued on page 11)

Since the Bank did not obtain a judgment and issue a writ of attachment execution thereon until February, 1941, it is clear that whatever rights the Bank obtained thereby were subordinate to

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(Footnote 5—Continued)

1922 were made falsely and fraudulently with intent to evade taxes.

There were introduced in evidence in the hearing before the bankruptcy referee on October 13, 1942, as Exhibits 1, 2, and 3, waivers obtained from Maddas pursuant to Section 276 of the Internal Revenue Code, *infra*, p. 41, extending the time for collection of the unpaid 1920, 1921, and 1922 taxes by distraint or proceeding in court begun before December 31, 1942. The waivers are not contained in the record below or in the record certified to this Court, since no question was raised concerning the running of the period of limitation until the petition was filed in this Court (Pet. 32–35).

The filing of a claim with a trustee in bankruptcy, receiver, or probate court constitutes the commencement of a proceeding in court for collection. *In re McClure Co.*, 38 F. 2d 538 (N. D. Ga.); *Hammond* v. *Carthage Sulphite Pulp and Paper Co.*, 34 F. 2d 155 (N. D. N. Y.); *United States* v. *Paisley*, 26 F. Supp. 237 (N. D. Ill.); *United States* v. *First National Bank*, 54 F. Supp. 351 (N. D. Ohio). On December 6, 1941, the United States filed with the trustees in bankruptcy notices of its liens and claims for payment of all moneys awarded Maddas on account of its lien for taxes. See *In re Victor Brewing Co.*, 48 Supp. 907 (W. D. Pa.). These claims were timely. The contention that they were not cannot, moreover, be advanced for the first time in this Court, *Hormel* v. *Helvering*, 312 U. S. 552, 556; *Blair* v. *Oesterlein Co.*, 275 U. S. 220, 225; *Ashton* v. *Glaze*, 95 F. 2d 427, 429 (C. C. A. 9), especially where, as here, the record on appeal has been prepared without reference to the question sought to be raised. *H. E. Wolfe Const. Co.* v. *Fersner*, 58 F. 2d 27 (C. C. A. 4); cf. *Hughes* v. *Windel*, 317 U. S. 134, and *McCandless* v. *Furland*, 293 U. S. 67, 73–74.

the liens of the United States just referred to.[6] If Maddas's right to the fee awarded him by the referee in bankruptcy in 1941 for his services as receiver (R. 18) is property or a right to property covered by the Government's lien, the lower court was correct in approving the order directing payment of the fee to the United States.

The Bank contends that the lien under Section 3670 attaches only to property and rights to property which Maddas owned when the lien came into existence and that, further, since Maddas had performed no services as receiver when the lien arose in 1935 and since "future earning capacity" is not property under the law of Pennsylvania, there is no property right embracing the fee, to which the lien attaches.[7] (Pet. 3, 8, 14.)

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[6] There is, of course, no question as to the general principle that a perfected lien prior in point of time prevails over subsequently arising rights, or liens. *Michigan* v. *United States*, 317 U. S. 338; *Howard* v. *Railway Co.*, 101 U. S. 837, 845; *Rankin* v. *Scott*, 12 Wheat. 177, 179; *United States* v. *City of Greenville*, 118 F. 2d 963, 966 (C. C. A. 4); compare *United States* v. *Alabama*, 313 U. S. 274; *Burton* v. *Smith*, 13 Pet. 464.

[7] In support of its argument that future earning capacity is not a property right the Bank cites Pennsylvania cases to show that future earnings are not assignable under the law of that State. (Pet. 24–26.) The point has no relevance here, since this case is concerned, not with future earning capacity, but with the receiver's fee after it had been earned. In any case, however, there is no indication in Section 3670 of the Internal Revenue Code that the term "rights to property" means only property rights which are assignable under state law. On the contrary, the statute is one that is to be given a

(Continued on page 13)

The Government's position, which was sustained by the lower court (R. 15–18), is that "all property and rights to property" of the taxpayer, to which the lien attaches under the statute, includes property which the taxpayer may acquire while the lien is in effect, as well as property which he owned at the time the lien became operative. We do not contend that in 1935 there was a presently existing right of property in Maddas's future earnings, to which the lien applied. Upon completion of Maddas's services as receiver in 1940, however, or at least when the fee was finally allowed in June 1941, he acquired the right to receive a reasonable fee, and this was a right of property acquired after the lien arose, which came under the lien. This lien is superior to any claim subsequently arising.

A. THE LIEN APPLIES TO AFTER-ACQUIRED PROPERTY.

It has been uniformly held, except for dicta in two cases which will be discussed below, that the Government's tax lien attaches to after-acquired property. *Citizens Nat. Trust & S. Bank of Los Angeles* v. *United States*, 135 F. 2d 527 (C. C. A. 9); *Nelson* v. *United States*, 139 F. 2d

uniform application to all property rights wherever located, irrespective of whether or not they are assignable under local law. Cf. *Helvering* v. *Stuart*, 317 U. S. 154, 161–162; *Lyeth* v. *Hoey*, 305 U. S. 188, 194; *Burnet* v. *Harmel*, 287 U. S. 103, 110.

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162 (C. C. A. 9), certiorari denied, 322 U. S. 764; *Investment & Securities Co.* v. *United States*, 140 F. 2d 894 (C. C. A. 9); *United States* v. *Worley* (S. D. Ind.), decided March 8, 1940 (27 A. F. T. R. 1143); *Minnesota Mut. Life Ins. Co.* v. *United States*, 47 F. 2d 942, 944 (N. D. Tex.); *Graves* v. *Commissioner*, 12 B. T. A. 124, 132–133; T. D. 4275, VIII–2 Cum. Bull. 167 (1929) (*infra*, pp. 54–55); G. C. M. 4715, VII–2 Cum. Bull. 94 (1928) (*infra*, pp. 52–54). See also Rogge, *The Tax Lien of the United States*, 13 A. B. A. J. 576, 579 (1927), in which it was said prior to any explicit Federal decision that, since the lien is a general, sweeping lien, "it will apply to all the property that the tax debtor subsequently acquires," and Note, 56 Harv. L. Rev. 143 (1942).[8] Furthermore, the clear implication of the decisions in *United States* v. *Morris & Essex R. Co.*, 135 F. 2d 711 (C. C. A. 2), certiorari denied, 320 U. S. 754; *United States* v. *Warren R. Co.*, 127 F. 2d 134 (C. C. A. 2); *Matter of Rosenberg*, 269 N. Y. 247, certiorari denied, 298 U. S. 669; and *United States* v. *Canfield*, 29 F. Supp. 734 (S. D. Cal.), appeal dismissed *sub. nom. Security First Nat. Bank of Los Angeles* v. *United States*, 113 F. 2d 491 (C. C. A. 9), although it is not

[8] Cf. *Robinson* v. *Youngblood*, 54 Ind. App. 669, in which it was held, under a state statute which made all property of a taxpayer liable for the payment of all taxes, that (p. 672) "it is clear that all property of the person against whom taxes are assessed is covered by the lien of such taxes regardless of whether the title is acquired before or after the lien attaches."

spelled out in so many words, is that the tax lien embraces subsequently acquired property. The conclusion of these cases results from the broad language of the statute and from related considerations.

1. *The Word "All" in the Statute Embraces After-Acquired Property.*

Section 3670 contains the inclusive word "all" to designate the property to which the lien attaches. No broader term could have been employed. In the absence of a clearly indicated intention on the part of Congress to restrict the meaning of the phrase "all property and rights to property", there is no reason to circumscribe it by interpretation. This is particularly true since a statute providing for the collection of revenue is involved. Cf. *Michigan* v. *United States*, 317 U. S. 338; *United States* v. *Snyder*, 149 U. S. 210.

The provision for a Federal tax lien was originally enacted in Section 9 of the Act of July 13, 1866, c. 184, 14 Stat. 98, 107. That section reads in part:

> And if any person, bank, association, company, or corporation, liable to pay any tax, shall neglect or refuse to pay the same after demand, the amount shall be a lien in favor of the United States from the time it was due until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all property and

> rights to property belonging to such person, * * *"

Despite the many amendments to this statute, to be hereinafter discussed, the words "all property and rights to property" have not been changed or limited by Congress in any way. That their broad meaning embraces after-acquired property of the taxpayer was, on the contrary, recognized by an amendment in the Revenue Act of 1936 to Section 3207 of the Revised Statutes (now Sec. 3678 of the Internal Revenue Code, *infra*, pp. 46–47) which provides a remedy by civil action to enforce the lien, and in the original enactment of Section 3207. The amendment extends the action to personal property, whereas previously it had been limited to real property.[10]

The provision of Section 3207 was originally contained in Section 106 of the Act of July 20, 1868.[11] As enacted and in the revision incorporated in the Revised Statutes, that section provided that "The Commissioner of Internal Revenue may * * * direct that a bill in chancery be filed * * * to enforce the lien of the United States for tax upon any real estate, or to subject any real estate owned by the delinquent, or in which he has any right, title, or interest, to the

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[9] The provision was in the bill submitted to the House by the Ways and Means Committee and was not discussed on the floor of either the House or the Senate. See 71 Cong. Globe, pp. 2577–2578; 72 Cong. Globe, p. 3286. There were apparently no written committee reports on the bill.

[10] June 22, 1936, c. 690, Sec. 802 (a), 49 Stat. 1743.

[11] C. 186, 15 Stat. 125, 167.

payment of such tax." As amended, this provision was made to read that the bill in chancery may be filed "to enforce the lien of the United States for tax upon any property and rights to property, whether real or personal, or to subject any such property and rights to property, owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax."

The 1936 proposal to enlarge the Government's remedy upon the tax lien was originally contained in a bill to amend certain administrative provisions of the internal revenue laws which was later merged with the Revenue Bill of 1936.[12] It was described in the House committee report upon the administrative bill as intended to supply a jurisdiction previously lacking in the Federal courts "to enforce a lien for tax against personal property," in order to provide an alternative remedy in situations where distraint (see Section 3690 of the Internal Revenue Code, *infra*, p. 48) "would be drastic and would cause considerable hardship to parties interested in the taxpayer proceeded against."[13] Envisaging a situation in which the Government might seek to enforce the tax liability of a holding company against the securities of operating companies which it held, the committee pointed out that the seizure and sale of such se-

[12] See the statement of Congressman Doughton explaining the conference report upon the revenue bill, 80 Cong. Rec. 10270.

[13] H. Rep. No. 2818, 74th Cong., 2d sess., p. 7.

curities in distraint proceedings might have serious effects upon the operating companies. These effects might be avoided in judicial proceedings, particularly if the court were empowered to appoint a receiver. A provision was accordingly added to the statute, authorizing the appointment of "a receiver to enforce the lien." (See Section 3678 (d) of the Internal Revenue Code, *infra*, p. 47.) The committee report made no suggestion that the Government's remedy extends beyond its lien or that it is limited to securities owned by a holding company at the effective date of the lien. On the contrary, the language of the section, particularly as amended, has reference to enforcement of the lien, and the property which is the subject of the action is described as "any property and rights to property owned by the delinquent"—words of the present tense in relation to the time the action is brought, not to the time the lien became effective. The reference in the report to distraint as an alternative remedy also indicates that all of the property owned by the taxpayer at the time the remedy is invoked was envisaged; for as the petitioner concedes (Pet. 9), distraint may be had against all property without reference to when it was acquired. The conclusion seems inescapable that Congress has all along contemplated the application of the tax lien to all property owned by a taxpayer at the time the lien is sought to be enforced.

The evolution of the lien provision of Section 3670 itself points to the same conclusion. The original provision (Section 9 of the Act of July 13, 1866, *supra*) was incorporated into the Revised Statutes as Section 3186. In 1879 the words "from the time it was due," fixing the time the lien arises, were changed to "when the assessment list was received by the collector." See Section 3, Act of March 1, 1879, c. 125, 20 Stat. 327, 331.[14] The Act of March 4, 1913, c. 166, 37 Stat. 1016, amending Section 3186 of the Revised Statutes, for the first time made provision for the protection of mortgagees, purchasers, and judgment creditors, by providing that tax liens shall not be valid against them until notice of such liens shall be filed in the office of the clerk of the district court[15] or an appropriate state office. A minor amendment, not relevant here, was made as to the recording of such notices by the Act of February 26, 1925, c. 344, 43 Stat. 994. By Section 613 of the Revenue Act of 1928, c. 852, 45 Stat. 791, 875,

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[14] This change was made in the Senate, sitting as a committee of the whole, but without discussion. 8 Cong. Rec., Part 2, p. 1441.

[15] The committee reports on this bill state that the lien is so comprehensive that it covers all property and rights of the delinquent situated anywhere in the United States. They also show that the amendment was necessary, in view of this Court's decision in *United States* v. *Snyder*, 149 U. S. 210, to protect innocent purchasers, mortgagees, and judgment creditors from the "secret" lien. S. Rep. No. 1315, 62d Cong., 3d Sess., pp. 1-2; H. Rep. No. 1018, 62d Cong., 2d Sess., pp. 1-2.

it was provided that the lien should "continue until the liability for such amount [of tax] is satisfied or becomes unenforceable by reason of lapse of time." [16]

After the 1928 amendment, as before, the statute made no explicit reference to after-acquired property; [17] but if it should be held that the tax lien attaches only to property or property rights owned by the taxpayer at the time the lien was perfected, the new word "continue" in the Rev-

[16] The reports are not helpful with respect to the reason for this amendment. H. Rep. No. 2, 70th Cong., 1st Sess., p. 35 (1939-1 Cum. Bull. (Part 2) 384, 407–408); S. Rep. No. 960, 70th Cong., 1st Sess., p. 43 (1939-1 Cum. Bull. (Part 2) 409, 439).

To complete the legislative history: Section 3186 of the Revised Statutes was further amended in a way not material here by Section 509 of the Revenue Act of 1934, c. 277, 48 Stat. 680, 757. Revised Statutes, Section 3186, as amended, became Sections 3670, 3671, and 3672 of the Internal Revenue Code. Section 3672 was amended by Section 401 of the Revenue Act of 1939, c. 247, 53 Stat. 862, 882, to protect pledgees against the lien unless notice is filed and to protect innocent purchasers, mortgagees, or pledgees of a "security", unless they have actual notice of the existence of the lien. Section 505 of the Revenue Act of 1942, c. 619, 56 Stat. 798, made only a formal amendment to Section 3672.

[17] Compare Section 1009 of the Internal Revenue Code, which imposes a ten-year lien for gift taxes upon gift property and provides that if the gift property is sold to a bona fide purchaser for a full consideration it shall be divested of the lien, but that "the lien, to the extent of the value of such gift, shall attach to all the property of the donee (including after-acquired property)", except any part sold to a bona fide purchaser for a full consideration. This provision originated in Section 510 of the Revenue Act of 1932, c. 209, 47 Stat. 169.

enue Act of 1928 would be deprived of virtually all meaning. Under the previous unamended section (*supra*, pp. 15–16), the lien would continue in any event as to property owned at the time the lien was perfected, until the tax was paid or the lien was otherwise removed. The additional language strongly suggests that the continuation has reference to property which the taxpayer may subsequently acquire. It would thwart the purpose of Congress in providing that the lien is to "continue" with respect to "all" of a taxpayer's property, to limit it to certain property only, namely, that which was owned when the lien arose. Such an interpretation would mean that in a case in which the taxpayer owned no property when the lien was created, the lien would never become effective. By specifying that the lien should continue, Congress provided for this situation and, as well, made certain that additional property of all taxpayers against whom liens might become effective, should become subject to the lien.[18]

[18] That Congress has no policy to release a taxpayer or any property he may acquire from liability until his taxes have been paid in full is shown by reference to the Bankruptcy Act of 1898, c. 541, 30 Stat. 544, as amended (11 U. S. C. 35). There Congress has long provided (Section 17 (a) (1)) that taxes due the United States are not dischargeable in bankruptcy. Hence, although a bankrupt turns over all his property, he does not receive a discharge as to his taxes and any property he may acquire in the future can be seized. There is no reason to believe that Congress intended a more lenient policy in the case of an ordinary delinquent taxpayer subject to the lien.

It is true, as the Bank states (Pet. 29), that the 1928 amendment placed a limitation upon the life of the lien which had not previously been expressed; but it does not follow that the lien was not intended to have full effect during its continuance. The 1928 amendment emphasizes that the purpose of the lien is to implement the collection of the tax, and it therefore expires when the tax becomes uncollectible. It extends, likewise, to all property answerable for the tax, including after-acquired property, to which the remedy of distraint applies (see *supra*, p. 18).[19]

2. *The Administrative Construction Has Been in Accord.*

The administrative construction of Section 3186 of the Revised Statutes (now Section 3670 of the Internal Revenue Code) has consistently been that the lien includes after-acquired property. G. C. M. 4715, VII–2 Cum. Bull. 94 (1928) (*infra*, pp. 52–54), discusses the provision of Section 613 of the Revenue Act of 1928 that a Collector may issue a certificate of release of a tax lien, if he finds that the tax assessment together with interest has been satisfied or has become unenforceable. The memorandum ruled that a release of the Government's lien should not be given before expiration of the statutory period of limitation if the tax has not

[19] If a taxpayer is the head of a family, his property which is subject to distraint does not include the limited classes of property specified in Section 3691 of the Internal Revenue Code, *infra*, pp. 48–49.

been paid, because the taxpayer may acquire other property to which the lien would attach prior to the expiration of the statutory period.

Similarly, T. D. 4275, VIII–2 Cum. Bull. 167 (1929) (*infra*, pp. 54–55), which also promulgated regulations dealing with the release and discharge of tax liens under Section 613, warned Collectors to secure waivers extending the time for collection of a tax (thereby extending the period of effectiveness of the lien) whenever it is reasonably possible that a taxpayer may acquire property or property rights from which the liability may be satisfied. See also *Graves* v. *Commissioner*, 12 B. T. A. 124, in which it was said (p. 133):

> It [the lien] relates back from the time of notice and demand to the time when the assessment list was received by the collector, and it attaches upon such property as the taxpayer has at the time the lien arises, that is, at the time of notice and demand, *United States* v. *Pacific R. R.*, 1 Fed. 97, and, of course, to all the property that the tax debtor subsequently acquires.

Since these administrative interpretations became known, Congress has amended Section 3186 of the Revised Statutes; has incorporated it into the Internal Revenue Code; and has amended the Code two times in pertinent respects, without excluding after-acquired property from the scope of the lien. See *supra*, pp. 20–21. In these circumstances, the legislature must be deemed to

have impliedly accepted the administrative construction. *Helvering* v. *Reynolds Co.*, 306 U. S. 110; *National Lead Co.* v. *United States*, 252 U. S. 140; *Maryland Casualty Co.* v. *United States*, 251 U. S. 342.

3. *The Analogy of Judgment Liens Supports the Extension of the Tax Lien to After-acquired Property.*

In *Citizens Nat. Trust & S. Bank of Los Angeles* v. *United States*, 135 F. 2d 527 (C. C. A. 9), the court referred to the analogy of judgment liens (p. 528); but the court below thought that since a judgment lien is concerned only with real estate, the analogy is inapplicable to this case which involves only personalty. (R. 17.) The *Citizens National Trust & Savings Bank* case also involved only personalty, however (135 F. 2d at 529), and we think, as did the Circuit Court of Appeals for the Ninth Circuit, that the analogy is helpful. A tax assessment has the effect of a judgment. *Bull* v. *United States*, 295 U. S. 247, 260. Hence the lien arising therefrom, although of a higher status, possesses the attributes of a judgment lien as well as many of its own which a judgment lien may not have. Judgment liens historically are liens only upon real estate, whereas the tax lien is on all property, both real and personal; but the same considerations which cause a judgment lien to attach to after-acquired property of the type which is subject to such a lien should cause the tax lien to apply to

all after-acquired property of types to which that lien might originally have applied. The mere fact that property is personal should not mean that the operation of liens with respect to it is different.

By the great weight of authority, in the absence of statute, judgment liens do extend to after-acquired real estate. *Coad* v. *Cowhick*, 9 Wyo. 316; *Atlas Portland Cement Co.* v. *Fox*, 265 Fed. 444, 266 Fed. 1021 (App. D. C.); *Colt* v. *DuBois*, 7 Neb. 391; *Duell* v. *Potter*, 51 Neb. 241; *Musa* v. *Segelke & Kolhaus Co.*, 224 Wis. 432; *Harrison and Wife* v. *Roberts*, 6 Fla. 711; *Porter-Mallard Co.* v. *Dugger*, 117 Fla. 137; *Steele* v. *Taylor*, 1 Minn. 274; *Babcock* v. *Jones*, 15 Kan. 296; *Ralston* v. *Field*, 32 Ga. 453; *Trustees R. E. Bank* v. *Watson & Hubbard*, 13 Ark. 74; cf. *Jenkins* v. *Gowen*, 37 Miss. 444; *Jones* v. *Hall*, 177 Va. 658. This is also the rule in England. 19 Halsbury, *Laws of England* (2d ed.), 251; *Coad* v. *Cowhick*, *supra*. Only two states, Pennsylvania and Ohio, seem to have taken the contrary view; and even in these the rule apparently was continued, in the face of attacks upon its correctness, only because it had become too firmly rooted in the local law to be changed. See *Waters's Appeal*, 35 Pa. 523; *Stiles* v. *Murphy*, 4 Ohio 92. We submit that the rule followed by the States generally with respect to judgment liens is correct and should be applied to the tax lien as respects both real

and personal property.[20] See *United States* v. *Taft*, 44 F. Supp. 564 (S. D. Cal.), affirmed *sub nom. Citizens Nat. Trust & S. Bank of Los Angeles* v. *United States*, 135 F. 2d 527 (C. C. A. 9).

4. *Certain Dicta to the Contrary Are Not Persuasive.*

As has been indicated (*supra*, p. 13), two cases contain dicta to the effect that the tax lien does not capture after-acquired property. In *United States* v. *Pacific Railroad*, 1 Fed. 97 (C. C. E. D. Mo.), the question was whether the lien attached to property which had belonged to the taxpayer at the time the taxes became due but which had been conveyed to innocent purchasers prior to demand for the taxes and perfection of the Government's lien. The court construed the statute (as it existed in 1880) to mean that the lien, when it attaches upon demand, relates back to the time when the tax was due, but that it does not attach to property transferred to innocent purchasers

[20] The Pennsylvania rule that after-acquired real property is not covered by a judgment lien should, of course, not be persuasive in deciding the scope of the tax lien, merely because property located in Pennsylvania is involved. A uniform rule as to the scope of the tax lien must be formulated for a nationwide scheme of collection, and this is not determinable by reference to state law on the subject, unless Congress has clearly so decreed. Cf. *Helvering* v. *Stuart*, 317 U. S. 154, 161–162; *Lyeth* v. *Hoey*, 305 U. S. 188, 194.

in the interim,[21] applying only to property owned "at the time when the demand is made" (1 Fed. at 100). Since the case did not involve after-acquired property, the language employed is not significant with respect to such property. In any case, the court was construing the statute as it read prior to the amendment in 1928, which, as we have shown, contains additional evidence of the intent of Congress that the lien shall attach to after-acquired property. See *Citizens Nat. Trust & S. Bank of Los Angeles* v. *United States*, 135 F. 2d 527, 529–530 (C. C. A. 9).

United States v. *Long Island Drug Co.*, 115 F. 2d 983 (C. C. A. 2), involved an action brought to enforce the liability provided in Section 3710 (b) of the Internal Revenue Code (*infra*, p. 51), against the Drug Company for failure to surrender property of an employee demanded by the collector. The Company's liability depended on whether it was "in possession of property, * * * sub-

[21] This holding may have been erroneous since it has been held by this Court that the lien, prior to its amendment in 1913 to protect purchasers, mortgagees, and judgment creditors until notice of the lien has been recorded, does attach to property in the hands of bona fide purchasers and encumbrancers. *United States* v. *Snyder*, 149 U. S. 210; see also *United States* v. *Curry*, 201 Fed. 371 (D. Md.); and cf. *Detroit Bank* v. *United States*, 317 U. S. 329, deciding that the estate tax lien created by Section 827 of the Internal Revenue Code is valid generally without recordation.

ject to distraint",[22] of its employee Steinberg on the dates when demands and copies of distraint warrants and of previous notices of liens with respect to taxes due from Steinberg (see Section 3692 of the Internal Revenue Code, *infra*, pp. 49–50) were served on the Company on April 15, 1936, and March 7, 1939, under Section 3710 (a). At the time of the first demand there was no accrued salary due Steinberg, since he had already overdrawn his salary, and hence no property in the Drug Company's hands subject to distraint. Subsequently, but before service of the second demand, Steinberg agreed with the Drug Company that all of his earnings might thereafter be applied toward repayment of loans made by the Drug Company to his wife, which he had guaranteed. The Circuit Court of Appeals for the Second Circuit held that no salary was due Steinberg when the second demand was made upon the Drug Company, since all of his earnings passed immediately to the Company by virtue of the assignment.

The court held that the contingent possibility that the taxpayer, Steinberg, might receive future earnings was not an existing right of property subject to levy at the time of the first demand

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[22] Section 3690 of the Internal Revenue Code authorizes distraint upon the goods, chattels, and effects, including bank accounts and evidences of debt of the delinquent taxpayer; and if these are not sufficient, the collector is authorized by Section 3700 (*infra*, p. 51) to seize and sell real estate.

and, further, that no lien had been created with respect to these earnings which might prevail over the subsequent assignment to the Drug Company. The basis of the decision was that at no time was the Company in possession of accrued earnings belonging to the taxpayer, upon which either the collector's demand or the Government's lien could operate. Hence the court's statement that "rights which do not exist at the time of the demand upon the taxpayer are not subject to any lien" was made *obiter*, as was recognized by the court below (R. 17–18) and by the Circuit Court of Appeals for the Ninth Circuit in the *Citizens Nat. Trust & S. Bank* case (135 F. 2d at 530).

The dictum of the *Long Island Drug Co.* case, moreover, should be considered in the light of the later decisions of the same court in *United States* v. *Warren R. Co.*, 127 F. 2d 134 (C. C. A. 2), and *United States* v. *Morris & Essex R. Co.*, 135 F. 2d 711 (C. C. A. 2), certiorari denied, 320 U. S. 754. In the *Warren Railroad Co.* case, that company and two other railroad companies had leased all their railroad properties to the Delaware, Lackawanna & Western Railroad Company, in consideration of the payment of agreed rentals directly to the lessors' stockholders and the payment of taxes on the properties by the lessee. The Government sought to collect from the lessee income taxes upon the lessors, on two theories: First, that the lessee had agreed to pay income taxes; and

second, that the lessee was liable under Section 3710 (b) for failure to surrender property of the lessors in its possession upon demand. The court held that the lessee's covenant to pay taxes on the property did not include the Federal income tax. It also held that when the levies were attempted no rentals were due to be paid to the lessors and hence there was no liability on the part of the lessee for failure to surrender property of the lessors in its possession. The court, however, authorized an amendment of the judgment, to enjoin the lessee from making further payments of rent to the stockholders of the lessors as they became due, until the United States should have an opportunity to levy upon the accrued rentals for income taxes. The judgment directed the lessee to pay the rentals to the collector when levied upon. The injunction rested upon the theory that the Government's right to levy upon the lessors' income as it became due should not be defeated by the right of the shareholders, wholly derivative from the lessor corporations, to have it paid to them. In the *Morris & Essex R. Co.* case, involving a similar lease, the court again sustained an injunction against payment of future rentals to the lessor's stockholders, holding specifically that the Government would have a lien on such rentals after demand upon the taxpayer for the taxes (135 F. 2d at 713).

No point is made in the *Warren Railroad* and *Morris & Essex Railroad* cases of the existence

of a contract right of the lessors to receive future payments under the leases at the time the tax liens attached. The liens were, rather, viewed as attaching to the rentals as they became due. Hence these cases appear to be on all fours with those cited above (pp. 13–14), in which tax liens were held to be effective as to after-acquired property in the absence of previous contract rights to the property. In the *Citizens Nat. Trust & S. Bank* case, *supra*, the after-acquired property held subject to the lien was an inherited interest in an estate which arose after the lien; in *Nelson* v. *United States*, 139 F. 2d 162 (C. C. A. 9), certiorari denied, 322 U. S. 764, the lien was held to attach to a crop of grapes raised after the lien arose; and in *United States* v. *Worley*, 27 A. F. T. R. 1143 (S. D. Ind., 1940), dividends declared after the lien attached were held to be covered by the lien.[28]

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[28] The Bank cites (Pet. 26–28) *Investment & Securities Co.* v. *Robbins*, 49 F. Supp. 629 (E. D. Wash.), as supporting its position. A reading of that opinion shows the contrary. There the property involved was a dividend paid after the tax lien arose as a partial refund of an assessment previously paid by the taxpayer as a shareholder of an insolvent national bank. The court squarely held that the lien attached to this dividend as property of the taxpayer, even though it was after-acquired property, and this decision was affirmed on appeal. *Investment & Securities Co.* v. *United States*, 140 F. 2d 894 (C. C. A. 9). Here also the taxpayer possessed no contractual right to receive the dividend when the lien arose.

B. THE LIEN EXTENDS TO CLAIMS FOR COMPENSATION FOR PERSONAL SERVICES.

Nothing in the pertinent statutes or their legislative history suggests that claims for salary or wages previously earned are not property or a right to property which is subject to the lien for taxes. The policy which has found expression in state statutes limiting garnishment of wages to a percentage of earnings or exempting compensation for personal services entirely from attachment,[24] like the analogous policy in respect to homesteads (cf. *Shambaugh* v. *Scofield*, 132 F. 2d 345 (C. C. A. 5); *Staley* v. *Vaughn* (Tex. Civ. App., 1932) 50 S. W. 2d 907, 911–912), has not been embodied in the Internal Revenue Code. If it were to be, it should limit the right of distraint as well as the lien;[25] and petitioner acknowledges that the earnings here in question are subject to distraint (Pet. 9). A contrary policy also prevails with respect to the earnings of an individual following his discharge in bankruptcy, which, as has been pointed out (*supra*, fn. 18, p. 21), remain

[24] See Section 886 of Title 42, Purdon's Pennsylvania Statutes (1930); *Integrity Trust Co.* v. *Taylor*, 312 Pa. 3 (1933); *Steel* v. *McKerrihan*, 172 Pa. 280 (1896); *Hamberger* v. *Marcus*, 157 Pa. 133 (1893); *Bell* v. *Roberts*, 150 Pa. Super. Ct. 469 (1942).

[25] Cf. the proposed Internal Revenue Administrative Code, published by the Treasury Department in 1941, secs. 4094, 4122, and particularly the notes to these sections.

subject to the Government's antecedent claims for taxes.

It is settled, of course, that state statutes do not limit the United States in pursuing its remedies for the collection of taxes under Federal law, unless they have been made applicable by act of Congress. *Fink* v. *O'Neil,* 106 U. S. 272, 276–277; *Shambaugh* v. *Scofield,* 132 F. 2d 345 (C. C. A. 5); *Jones* v. *Kemp,* 144 F. 2d 478 (C. C. A. 10); *Kieferdorf* v. *Commissioner,* 142 F. 2d 723 (C. C. A. 9), certiorari denied, 323 U. S. 733; *United States* v. *City of Greenville,* 118 F. 2d 963 (C. C. A. 4); *Kyle* v. *McGuirk,* 82 F. 2d 212 (C. C. A. 3); *Cannon* v. *Nicholas,* 80 F. 2d 934 (C. C. A. 10). Nothing in the wording of Section 3670 of the Internal Revenue Code or of any other statute suggests that earned compensation for personal services is not subject to the lien for taxes.

It is scarcely necessary to labor the point that, whatever may be said as to the nature of the expectancy of an employee that he will earn wages in the future, or even of a contract right to continue in employment for a term, the right to "unpaid wages, salaries, or fees for services *already* rendered" is a right of property. (Noyes, *The Institution of Property* (1936), p. 453). Like homesteads, therefore (*Jones* v. *Kemp, supra; Shambaugh* v. *Scofield,*

supra), and intangible property[26] and equitable interests,[27] earned wages are covered by the Government's tax lien; for they fall within the words and the intention of Congress.

The Bank argues, however, that the application of the lien to money claims will have an adverse effect on business dealings (Pet. 10, 37), stating (Pet. 37):

> If the interpretation placed on 3670 by the Court below is permitted to stand, it will be increasingly difficult for any person against whom a tax lien has been filed to get a new start or even to obtain employment. It would be hazardous for any one engaged in business or trade of any kind to deal with him.

This argument is based upon the erroneous assumption that an employer or debtor of the taxpayer, if he makes payment of sums due in igno-

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[26] *MacKenzie* v. *United States*, 109 F. 2d 540 (C. C. A. 9); *Citizens State Bank of Barstow, Tex.* v. *Vidal*, 114 F. 2d 380 (C. C. A. 10); *United States* v. *Warren R. Co.*, 127 F. 2d 134 (C. C. A. 2). In *United States* v. *Western Union Telegraph Co.*, 50 F. 2d 102 (C. C. A. 2), it was stated that the lien applied only to tangible property, but this holding was specifically disapproved in *United States* v. *Long Island Drug Co.*, 115 F. 2d 983, 986 (C. C. A. 2).

[27] *Matter of Rosenberg*, 269 N. Y. 247; certiorari denied, 298 U. S. 669; *United States* v. *Canfield*, 29 F. Supp. 734 (S. D. Cal.), appeal dismissed, *sub nom. Security-First Nat. Bank of Los Angeles* v. *United States*, 113 F. 2d 491 (C. C. A. 9); *Mercantile Trust Co.* v. *Hofferbert*, 58 F. Supp. 701 (D. Md.); cf. as apparently *contra*, *United States* v. *Dallas Nat. Bank*, 56 F. Supp. 181 (N. D. Tex.), pending on Government's appeal (C. C. A. 5).

rance of the tax lien, will be liable to the United States also. The lien, however, is upon the taxpayer's property and rights to property and not upon the correlative obligations of third persons to him. Third persons become liable to the Government only after demand by the collector pursuant to Section 3710 (a) of the Internal Revenue Code (*infra*, p. 51). A person upon whom no notice of distraint and demand for surrender of property has been served by the collector may therefore deal with another, whether or not he be delinquent in taxes, without fear of possible liability to the Government. See Kohlmeier, *Federal Tax Liens under Revised Statutes—Section 3186*, 13 Tax Magazine 191 (1935); cf. G. C. M. 5432, VIII–1 Cum. Bull. 134–135 (1929). Even if it were true that hardship to third persons might result from the lien, this fact would not be a ground for restricting the Government's claim by judicial decision, without warrant in the governing statute, as this Court has recently held. See *Detroit Bank* v. *United States*, 317 U. S. 329.

II

THE LIEN IS EFFECTIVE AS AGAINST SUBSEQUENT CLAIMANTS WITHOUT STEPS TO ENFORCE IT BY ATTACHMENT OR DISTRAINT

The Bank apparently takes the position in the present case that the Government does not have an effective lien until it is perfected by attachment or distraint. This position is without merit.

Sections 3670 and 3671 of the Internal Revenue Code themselves establish the lien, define the property upon which it operates, and fix the time when it commences and its duration. Although the lien is general in scope, it is a specific lien upon all property of the taxpayer. *United States* v. *City of Greenville,* 118 F. 2d 963 (C. C. A. 4); *Metropolitan Life Ins. Co.* v. *United States,* 107 F. 2d 311, 313 (C. C. A. 6). It arises spontaneously and is complete, requiring no subsequent action by the collector to perfect it. *United States* v. *City of Greenville, supra,* p. 965; *Maryland Casualty Co.* v. *Charleston Lead Works,* 24 F. 2d 836, 838 (E. D. S. C.). That the lien is not merely inchoate and is fully operative under the statute creating it is shown by the provisions of Section 3672 that the lien shall not be valid as against judgment creditors, purchasers, mortgagees, and pledgees until recorded, or against certain transferees of securities without actual notice; from the provisions of Sections 3673, 3674, and 3675 (*infra,* pp. 44–45) for release and partial discharge of property from the lien; and from the provision in Section 3679 (*infra,* pp. 47–48) for a civil action to clear the title to realty subject to the lien. These provisions have meaning only with reference to fully effective liens. It is incorrect, moreover, for the Bank to state (Pet. 2–3, 33) that the United States has taken no action to subject the receiver's fee to payment of the tax, since the United States filed with the trustees in bank-

ruptcy notice of liens and claims for payment of any fee or dividend awarded to Maddas. See footnote 5, *supra*, pp. 10–11.

Since the final step needed to render the liens for 1920, 1921, and 1922 taxes effective as against all other claimants, namely the filing of notice, was taken July 29, 1939, long before the Bank's judgment (see *supra*, pp. 3–4), there can be no question that these liens, if they embrace the receiver's fee as we contend, should prevail over the Bank's claim.

III

THE JUDGMENT OF THE COURT BELOW MAY ALSO BE SUPPORTED UPON THE GROUND THAT THE GOVERNMENT'S LIEN FOR 1936 TAXES AROSE AFTER THE TAXPAYER HAD ACQUIRED HIS PROPERTY RIGHT IN THE RECEIVER'S FEE; BUT THIS POINT WAS NOT PASSED UPON BY THE COURT BELOW

The Government's lien for 1936 taxes stands in a different relationship to Maddas's receiver's fee, which constitutes the property in dispute, from its liens for the years 1920, 1921, and 1922. The 1936 lien arose on January 20, 1941, when the collector received the assessment list for that year, and became valid as against judgment creditors on April 7, 1941, when notices were filed pursuant to Section 3672 of the Internal Revenue Code. At the time this lien arose Maddas had completed his services as receiver and had a right to receive a reasonable fee therefor, although the fee had not

yet been allowed by the referee and its amount had, therefore, not yet been determined.

The Bank obtained its judgment against Maddas on February 15 1941. A writ of attachment execution upon the judgment issued out of the state court on February 21, 1941, and was served upon the trustees in bankruptcy on that date.

The Government's contention is that its lien for 1936 taxes included Maddas's right to the receiver's fee already earned at the time the lien became effective, which was a right to property then vested in him. If this contention is correct, no question concerning the inclusion of after-acquired property arises with respect to this lien. Whether the lien prevails over the Bank's judgment and attempted attachment, which preceded the filing of notice of the tax lien, depends upon other considerations which were argued to the Circuit Court of Appeals in the briefs of both parties. That court, however, rested its judgment wholly upon the point that the liens for earlier years, which unquestionably arose prior to any claim of the Bank, embraced Maddas's after-acquired property right in the receiver's fee. Accordingly it became unnecessary for the court to pass upon the questions relating specifically to the 1936 lien. (R. 18.)

It is our contention that (a) the Bank's judgment alone did not confer a lien upon it under state law, (b) the Bank did not acquire a lien on the fee by virtue of the attachment in the state

court because the attachment was unauthorized and void, (c) even if an imperfect lien was obtained in the attachment proceedings, it terminated when further proceedings were enjoined by the bankruptcy court, and (d) in any event, under state law any lien which the Bank might possess attached only after the receiver's fee had become fixed in amount through its allowance by the bankruptcy court in June, 1941 (R. 8), and hence followed the Government's 1936 lien in point of time.

The foregoing questions are complex and require careful consideration of Pennsylvania state statutes and decisions, among other authorities. This Court, if it should decide that the Government is not entitled to the fund in question by virtue of the earlier tax liens, probably will not wish to undertake to resolve these questions without the benefit of their consideration by the Circuit Court of Appeals. See *Huddleston* v. *Dwyer*, 322 U. S. 232, 237; *Columbia River Co.* v. *Hinton*, 315 U. S. 143, 147. The petitioner has not based its objections to the decision of the court below upon any grounds which relate to these questions. Accordingly, we refrain from briefing these points and respectfully suggest that, if the judgment of the Circuit Court of Appeals cannot be affirmed upon the grounds which have been argued, the case be remanded for consideration of the points which remain unresolved by that court. *United States* v. *Ballard*, 322 U. S. 78, 88; *United States* v.

Wrightwood Dairy Co., 315 U. S. 110, 126; *Schriber Co. v. Cleveland Trust Co.*, 305 U. S. 47, 61.

CONCLUSION

For the reasons advanced under Points I and II of the argument, we respectfully urge that the judgment of the Circuit Court of Appeals be affirmed.

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OCTOBER, 1945.

APPENDIX

STATUTES

Internal Revenue Code:

SEC. 276. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION—EXCEPTIONS.

* * * * *

(c) *Collection After Assessment.*—Where the assessment of any income tax imposed by this chapter has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of such six-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. (26 U. S. C. 276.)

SEC. 3655. NOTICE AND DEMAND FOR TAX.

(a) *Delivery.*—Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof.

* * * * *

(26 U. S. C. 3655.)

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. (26 U. S. C. 3670.)

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. (26 U. S. C. 3671.)

SEC. 3672 [as amended by Sec. 401 of the Revenue Act of 1939, c. 247, 53 Stat. 862, and Sec. 505 of the Revenue Act of 1942, c. 619, 56 Stat. 798]. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien Without Notice.*— Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under state or territorial laws.*— In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With the clerk of district court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

* * * * *

(b) (1) *Exception in case of securities.*—Even though notice of a lien provided in section 3670 has been filed in the manner prescribed in subsection (a) of this section, or notice of a lien provided in section 3186 of the Revised Statutes, as amended, has been filed in the manner prescribed in such section or subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser, of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

(2) *Definition of 'security.*—As used in this subsection the term "security" means any bond, debenture, note, or certificate, or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase,

any of the foregoing; negotiable instrument; or money.

(3) *Applicability of subsection.*—Except where the lien has been enforced by a proceeding, suit, or civil action which has become final before the date of enactment of the Revenue Act of 1939, this subsection shall apply regardless of the time when the mortgage, pledge, or purchase was made or the lien arose. (26 U. S. C. 3672.)

SEC. 3673. RELEASE OF LIEN.

Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax, may issue a certificate of release of the lien if—

(a) *Liability satisfied or unenforceable.*—The collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable by reason of lapse of time; or

(b) *Bond Accepted.*—There is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations. (26 U. S. C. 3673.)

SEC. 3674. PARTIAL DISCHARGE OF PROPERTY.

(a) *Property Double the Amount of the Liability.*—Subject to such regulations as

the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon such property.

(b) *Part Payment.*—Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United States. (26 U. S. C. 3674.)

SEC. 3675. EFFECT OF CERTIFICATES OF RELEASE OR PARTIAL DISCHARGE.

A certificate of release or of partial discharge issued under this subchapter shall be held conclusive that the lien upon the property covered by the certificate is extinguished. (26 U. S. C. 3675.)

SEC. 3678. CIVIL ACTION TO ENFORCE LIEN ON PROPERTY.

(a) *Filing.*—In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell property and rights to property, whether real or personal, to satisfy the same, whether distraint proceedings have been commenced or not, the Attorney General at the request of the Commissioner may direct a civil action to be filed, in a district court of the United States, to enforce the lien of the United States for tax upon any property and rights to property, whether real or personal, or to subject any such property and rights to property owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax.

(b) *Parties to Proceedings.*—All persons having liens upon or claiming any interest in the property or rights to property sought to be subjected as aforesaid shall be made parties to such proceedings and be brought into court.

(c) *Adjudication and Decree.*—The said court shall, at the term next after the parties have been duly notified of the proceedings, unless otherwise ordered by the court, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property and rights to property in question, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property and rights to property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the find-

ings of the court in respect to the interests of the parties and of the United States.

(d) *Receivership.*—In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Commissioner during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity. (26 U. S. C. 3678.)

SEC. 3679. CIVIL ACTION TO CLEAR TITLE TO REALTY.

(a) *Obtaining Leave To File—*

(1) *Request for institution of proceedings by United States.*—Any person having a lien upon or any interest in the real estate referred to in section 3678, notice of which has been duly filed of record in the jurisdiction in which the real estate is located, prior to the filing of notice of the lien of the United States as provided in section 3672, or any person purchasing the real estate at a sale to satisfy such prior lien or interest, may make written request to the Commissioner to authorize the filing of a civil action as provided in section 3678.

(2) *Petition to court.*—If the Commissioner fails to authorize the filing of such civil action within six months after receipt of such written request, such person or purchaser may, after giving notice to the Commissioner, file a petition in the district court of the United States for the district in which the real estate is located, praying leave to file a civil action for a final determination of all claims to or liens upon the real estate in question.

(3) *Court order.*—After a full hearing in open court, the district court may in its discretion enter an order granting leave to

file such civil action, in which the United States and all persons having liens upon or claiming any interest in the real estate shall be made parties.

(b) *Service on United States.*—Service on the United States shall be had in the manner provided by sections 5 and 6 of the Act of March 3, 1887, entitled "An Act to provide for the bringing of suits against the Government of the United States", c. 359, 24 Stat. 506 (U. S. C., Title 28, Secs. 762, 763), as amended.

(c) *Adjudication.*—Upon the filing of such civil action the district court shall proceed to adjudicate the matters involved therein, in the same manner as in the case of civil actions filed under section 3678. For the purpose of such adjudication, the assessment of the tax upon which the lien of the United States is based shall be conclusively presumed to be valid.

(d) *Costs.*—All costs of the proceedings on the petition and the civil action shall be borne by the person filing the civil action. (26 U. S. C. 3679.)

SEC. 3690. AUTHORITY TO DISTRAIN.

If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with such interest and other additional amounts as are required by law, by distraint and sale, in the manner provided in this subchapter, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid. (26 U. S. C. 3690.)

SEC. 3691. PROPERTY EXEMPT FROM DISTRAINT.

(a) *Enumeration.*—There shall be exempt from distraint and sale, if belonging to the head of a family—

(1) *School books and wearing apparel.*—The school books and wearing apparel necessary for such family; also

(2) *Arms.*—Arms for personal use;

(3) *Livestock.*—One cow, 2 hogs, 5 sheep and the wool thereof, provided the aggregate market value of said sheep shall not exceed $50;

(4) *Fodder.*—The necessary food for such cow, hogs, and sheep, for a period not exceeding thirty days;

(5) *Fuel.*—Fuel to an amount not greater in value than $25;

(6) *Provisions.*—Provisions to an amount not greater than $50;

(7) *Household furniture.*—Household furniture kept for use to an amount not greater than $300; and

(8) *Books and tools of trade or profession.*—The books, tools, or implements, of a trade or profession, to an amount not greater than $100.

(b) *Appraisal.*—The officer making the distraint shall summon three disinterested householders of the vicinity, who shall appraise and set apart to the owner the amount of property herein declared to be exempt. (26 U. S. C. 3691.)

SEC. 3692. LEVY.

In case of neglect or refusal under section 3690, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property and rights to property, except such as are exempt by the preceding section, belonging to such person, or on which the lien provided in section 3670 exists, for the payment of the sum due, with interest and penalty for nonpayment, and

also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy. (26 U. S. C. 3692.)

SEC. 3693. PROCEEDINGS ON DISTRAINT.

When distraint is made, as provided in section 3690—

(a) *Account and Notice to Owner.*—The officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distraint, shall be left with the owner or possessor of such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded and the time and place of sale; and

(b) *Public Notice.*—Forthwith cause a notification to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted at the post office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof.

(c) *Time and Place of Sale.*—The time of sale shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as provided in subsection (b) and the place proposed for the sale shall not be more than five miles distant from the place of making such distraint.

(d) *Adjournment of Sale.*—Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not

for a time to exceed in all thirty days. (26 U. S. C. 3693.)

SEC. 3700. AUTHORITY TO DISTRAIN.

When goods, chattels, or effects sufficient to satisfy the taxes imposed upon any person are not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate. (26 U. S. C. 3700.)

SEC. 3701. PROCEEDINGS ON DISTRAINT [OF LAND].

* * * * * *

SEC. 3710. SURRENDER OF PROPERTY SUBJECT TO DISTRAINT.

(a) *Requirement.*—Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) *Penalty for Violation.*—Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

(c) *Person Defined.*—The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a

duty to perform the act in respect of wh the violation occurs. (26 U. S. C. 3710.)

SEC. 3744. SUITS FOR TAXES.

Taxes may be sued for and recovered in the name of the United States in any proper form of action, before any district court of the United States, for the district within which the liability to such tax is incurred, or where the party from whom such tax is due resides at the time of the commencement of the said action. (26 U. S. C. 3744.)

Revised Statutes:

SEC. 3466. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed. (31 U. S. C. 191.)

ADMINISTRATIVE RULINGS

G. C. M. 4715, VII-2 Cum. Bull. 94 (1928):

A collector states that numerous requests have been received by his office for the release of liens attaching to property of taxpayers for the nonpayment of taxes, and inquiries how this office construes the meaning of section 613 (c) 1 of the Revenue

Act of 1928 as it affects tax liens and their release.

In connection with the inquiry mention is made of an additional tax that was assessed against a certain corporation which had become insolvent, although not going through bankruptcy, before the assessment reached the collector's office. It appears that during the corporation's solvency a bank in the same locality had advanced it moneys secured by a first mortgage upon the corporation's physical assets, the mortgage being properly recorded, and that when the assessment reached the collector's office warrants for distraint were in due time issued but no collection made, thus necessitating the filing of Federal tax liens. The bank has since foreclosed, and now has an opportunity to make a sale of the property, but the purchaser objects, on the ground that the unsatisfied tax lien beclouds the title. The bank contends that the tax lien is invalid and unenforceable because of the priority of the mortgage over the tax lien, as shown by the collector's records, and that section 613 (c) 1 of the Revenue Act of 1928 authorizes collectors of internal revenue to remove liens in cases of this character.

The above-mentioned section of the new law reads as follows:

> SEC. 613 (c). Subject to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, the collector of internal revenue charged with an assessment in respect of any tax—
>
> (1) May issue a certificate of release of the lien if the collector finds that the liability for the amount assessed,

> together with all interest in respect thereof, has been satisfied or has become unenforceable;

Assuming the fact of the foreclosed prior mortgage and all other facts to be as stated, it is the opinion of this office that the above-quoted section of the law does not mean that the Government's lien against the property of a taxpayer should be released before the 6-year period governing collection has expired, for the reason that it is altogether probable that a delinquent taxpayer may at any time prior to the expiration of the statutory period of limitation become possessed of property against which the lien may attach, thus making the tax liability enforceable through the lien. If the taxpayer is insolvent the tax may be compromised, offers in compromise being made through the collector of internal revenue for the district in which the taxpayer lives, from whom the appropriate forms may be obtained.

The following regulations were prescribed in T. D. 4275, VII–2 Cum. Bull. 167 (1929) in accordance with the provisions of Section 3186 of the Revised Statutes as amended:

> The collector of internal revenue to whom is charged an assessment in respect of any internal-revenue tax shall issue a certificate of release of the tax lien whenever he finds that the liability for the amount assessed (together with all interest in respect thereof) has been satisfied or has become unenforceable. The word "unenforceable" as here used means unenforceable as a matter of law, and not merely uncollectible or unenforceable as a matter of fact. Tax liabilities frequently are unenforceable in

fact for the time being, due to the temporary nonpossession by the taxpayer of discoverable property or property rights. In all cases the liability for the payment of the tax continues until satisfaction of the tax in full or until the expiration of the statutory period for collection, including such period as the taxpayer by consent in writing may agree with the Commissioner shall constitute the time within which the tax assessed may lawfully be collected. Collectors should continue to investigate carefully all cases of delinquent taxpayers where notice of lien has been filed, with a view of obtaining, before the expiration of the collection period, such written consent for the extension of the collection period, whenever it is reasonably possible that the taxpayer may, in the future, acquire property or property rights from which the tax liability may be satisfied.

* * * * *

U. S. GOVERNMENT PRINTING OFFICE: 1958

SUPREME COURT OF THE UNITED STATES.

No. 50.—October Term, 1945.

Glass City Bank of Jeanette, Pennsylvania, Petitioner,
vs.
The United States of America.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[November 13, 1945.]

Mr. Justice Black delivered the opinion of the Court.

In 1941 the petitioner bank obtained a judgment in a Pennsylvania State Court against one Frank A. Maddas, for about $19,000.00. The United States had unpaid, judicially established, income tax claims against Maddas for the years 1920, 1921, and 1922,[1] which exceed $1,000,000.00. 40 B. T. A. 572; 114 F. 2d 548. Because of Maddas' past services as a State court receiver of a brewing company, the trustee of that company, now in bankruptcy, owes Maddas $3,228.53. The issue here is whether the bank or the government may recover on the debt owed to Maddas. The bank claims under a lien alleged to have been created by an attachment-execution issued on its State court judgment and served on the trustee in bankruptcy February 21, 1941. The United States claimed priority, by virtue of a tax lien under 26 U. S. C., §§ 3670, 3671,[2] which both parties admit arose in 1935, five years prior to the taxpayer's services as

[1] There is also a claim for 1936 taxes which raises different questions that need not be considered here.

[2] "Sec. 3670. Property Subject to Lien.

"If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

"Sec. 3671. Period of Lien.

"Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time."

Section 3672 provides that the lien shall not be valid against any mortgagee, pledgee, purchaser, or judgment creditor until notice is filed in an office designated by State law or in the office of the clerk of the United States District Court. Here such notice was duly filed.

receiver. The contention of the bank in the District Court[3] was that the statutory tax lien, which became effective in 1935, did not cover Maddas' claim since it did not exist when the lien arose but only thereafter, and that the government, therefore, could reach the debt only by garnishment or distraint as provided by other sections of the Internal Revenue Code. The Circuit Court of Appeals concluded that the statutory tax lien did cover after-acquired property and accordingly affirmed the District Court's judgment for the United States. 146 F. 2d 831. We granted certiorari because of statements made in the opinions of other courts which seemed to conflict with the conclusion below. *United States* v. *Long Island Drug Co.*, 115 F. 2d 983; *United States* v. *Pacific Railroad*, 1 Fed. 97.

By Section 3670, 26 U. S. C., Congress impressed a lien upon "all property and rights to property, whether real or personal, belonging" to a tax delinquent. Stronger language could hardly have been selected to reveal a purpose to assure the collection of taxes. Not content with this language, however, Congress also provided that the lien should "continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time." 26 U. S. C., § 3671. These two sections read together indicate that a continuing lien covers property or rights to property in the delinquent's hands at any time prior to expiration. This is confirmed by Section 3678, which provides that "whether distraint proceedings have been commenced or not", action to enforce the lien may be instituted against "any property and rights to property, whether real or personal, or to subject any such property and rights to property *owned by the delinquent*, or in which he *has* any right, title or interest, to the payment of such tax." (Italics supplied). For here is a plain intent to subject to the lien "property owned by the delinquent" when suit is filed, rather than only that owned when the lien arose. Indeed, the meaning of these sections is so plain as to render superfluous a detailed discussion of the legislative history which is consistent with our interpretation.[4]

[3] The District Court acquired jurisdiction because the indebtedness to Maddas was due from the trustee. The procedure by which that jurisdiction was acquired is sufficiently set forth in the opinions below and need not be repeated here. 54 F. Supp. 11; 146 F. 2d 831.

[4] 14 Stat. 98, 107; 15 Stat. 125, 167; 37 Stat. 1016; 45 Stat. 791, 875.

Furthermore the agencies administering the statute have construed it in the same way. Thus, in 1928 General Counsel Memorandum No. 4715, vii-2 Cum. Bul. 94, declared that "a delinquent taxpayer may at any time prior to the expiration of the statutory period of limitation become possessed of property against which the lien may attach, thus making the tax liability enforceable through the lien." Again in Treasury Decision 4275, viii-2 Cum. Bul. 167, Collectors were admonished to keep on the alert where notice of liens had been filed, so as to extend the period of their effectiveness "whenever it is reasonably possible that the taxpayer may, in the future, acquire property or property rights from which the tax liability may be satisfied." And in *Graves* v. *Commissioner*, 12 B. T. A. 124, 133, the Tax Board said that the lien applied, "of course, to all the property that the tax debtor subsequently acquired."

The bank's arguments on behalf of a statutory construction supporting its claims are without merit. We are told that to increase unduly the scope of the government's lien is unwise. But most of the objections raised would apply not merely to liens that cover after-acquired property, but also with equal force to most other types of liens. At any rate the wisdom of legislation is a question for Congress. We are further told that the tax lien cannot attach to Maddas' claim because the law of Pennsylvania, where this obligation arose, does not treat "future earning capacity" as "property or rights to property." But the question of whether the tax lien covers future earning capacity is not before us. For the government here seeks to reach an already existing obligation for services rendered, which clearly falls within the statutory language. Cf. *Matter of Rosenberg*, 269 N. Y. 247. Moreover, the Congressional meaning is not to be determined by resorting to the local law of Pennsylvania. *United States* v. *Snyder*, 149 U. S. 210; *Helvering* v. *Stuart*, 317 U. S. 154, 161-162.

Our conclusion is that the lien applies to property owned by the delinquent at any time during the life of the lien. This is in accord with all the cases that have directly passed upon this question.[5] As previously noted, there are two cases which con-

[5] Citizens Nat. Trust & S. Bank of Los Angeles v. United States, 135 F. 2d 327 (C. C. A. 9); Nelson v. United States, 139 F. 2d 162 (C. C. A. 9); Investment & Securities Co. v. United States, 140 F. 2d 894 (C. C. A. 9); United States v. Worley (S. D. Ind.), decided March 8, 1940 (27 A. F. T. R. 1143); Minnesota Mut. Life Ins. Co. v. United States, 47 F. 2d 942, 944 (N. D. Tex.). See also United States v. Warren R. Co., 127 F. 2d 134; Matter of Rosenberg, *supra*.

tain language which might lead to another conclusion. But nothing there said offers any persuasive reason for restricting the scope of the lien.

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES.

No. 50.—October Term, 1945.

Glass City Bank of Jeanette, Pennsylvania, Petitioner, *vs.* The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[November 13, 1945.]

Mr. Justice Rutledge, dissenting.

I am unable to find in the applicable statutes the clear expression of Congressional intent which I think is required to extend the tax lien to after-acquired property. Under § 3670 the lien is imposed as to taxpayers delinquent after demand "upon all property and rights to property, whether real or personal, belonging to such person." By § 3671 the lien arises, unless another date is specifically fixed by law, "at the time the assessment list was received by the collector" and continues "until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time." Nothing in these sections gives any indication that Congress intended the lien to reach after-acquired property. The language used, whether in § 3670 or in § 3671, is fully satisfied if the lien is held to attach to property belonging to the taxpayer as of the time the lien arises.[1] Had Congress intended to reach not only every description of property then owned by the taxpayer, but also every species which might later come into his hands, clearer words than "all property" and "belonging to" were readily available to express this purpose. The harshness of the consequences, not only for the taxpayer but for others dealing with him, which this case dramatically exemplifies, gives reason beyond the ambiguity of the language used for thinking there was no such intent.

[1] Although by § 3671 the lien "arises" as of the time the assessment list is received by the collector, it relates back to the time of notice and demand, § 3670, as against the taxpayer, though by virtue of § 3672(a) it is not valid as against any mortgagee, pledgee, purchaser, or judgment creditor "until notice thereof has been filed by the collector" as provided.

Nor is such an intent supplied by use of the present tense of the verb "has" in the final clause of § 3678(a).[2] That section merely provides for the manner in which the lien defined by §§ 3670 and 3671 shall be enforced. Section 3678(a), in my opinion, was not intended to add to the scope of the lien or extend its definition beyond the limits defined by those sections. If the lien was designed to reach after-acquired property, the alternative method specified in § 3678(a) for reaching the property then owned by the debtor would seem to be redundant.

I find nothing in the legislative history which discloses any intention, more clearly than the words of the statute themselves, to include after-acquired property within the coverage of the lien. In the absence of clearer statutory foundation, the comparatively recent administrative construction cannot supply the required Congressional intent; and the scanty evidence of established and accepted practice is neither so wholly consistent nor so convincing as to furnish this necessary element.

Accordingly I would reverse the judgment and remand the cause to the Circuit Court of Appeals for the consideration and disposition of the issues presented to but not determined by it in view of its disposition upon the matters now determined here.

Mr. Justice FRANKFURTER and Mr. Justice DOUGLAS join in this opinion.

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[2] "Sec. 3678. Civil Action to Enforce Lien on Property.

"(a) Filing.—In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell property and rights to property, whether real or personal, to satisfy the same, whether distraint proceedings have been commenced or not, the Attorney General at the request of the Commissioner may direct a civil action to be filed, in a district court of the United States, to enforce the lien of the United States for tax upon any property and rights to property, whether real or personal, or to subject any such property and rights to property owned by the delinquent, or in which he *has* any right, title, or interest, to the payment of such tax." (Emphasis added.)